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HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA  
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STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 1, 2000  
1:36 P.M.







1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, MARCH 1, 2000

16 1:36 P.M.

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25 Reported by:

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27 Evelyn J. Mizak  
28 Shorthand Reporter

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

ALBANY

NOTES OF THE

LEGISLATURE

OF THE STATE OF NEW YORK

FOR THE YEAR 1900

ALBANY



APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR JOE BACA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

SENATOR JACK O'CONNELL

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

ANDY PUGNO, Consultant to SENATOR KNIGHT

BRIAN KELLY, Transportation Consultant to Pro Tem

ALSO PRESENT

ROBERT J. ABERNETHY, Member  
California Transportation Commission

SENATOR JIM COSTA

JEREMIAH F. HALLISEY, Member  
California Transportation Commission

STEVE BAKER  
Professional Engineers in California Government

SEAN HARRIGAN, Member  
State Personnel Board

1 TOM RANKIN  
2 California Labor Federation, AFL-CIO

3 AARON READ  
4 California Association of Highway Patrolmen  
5 CDF Firefighters  
6 Professional Engineers in California Government



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## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: We have Governor's appointees, Robert Abernethy, Member, California Transportation Commission. Senator Costa.

SENATOR COSTA: Thank you very much, Mr. Chairman, Members of the Senate Rules Committee.

Very briefly, I think that on occasion we have opportunities to work with individuals that we think would make outstanding appointments to the state for public service purposes, and we have several individuals today that fall in that category in my opinion, one of them being the gentleman right next to me at this time.

Mr. Abernethy, whom I've known for a number of years and worked on a number of different issues with, and I want to commend the Governor for his appointment to the California Transportation Commission. I think he'll make an excellent appointee.

He is well versed on issues involving both the public and the private sector, and cares a great deal about improving transportation in California, knows its importance, and thinks that the Senator from San Francisco, Senator Burton, is doing an admirable job in his efforts to pursue California transportation policy.

I wholeheartedly support his appointment.

MR. ABERNETHY: Mr. President, Senators, it's a delight for me to be here with you. And I have enjoyed very much in a preliminary sort of way serving with a wonderful set

1 of colleagues on the Transportation Commission.

2 I hope that you make that service sustainable in  
3 the future.

4 I've found my colleagues, including our Executive  
5 Director, to be very intelligent people, hard working, very  
6 congenial. It's been a lot of fun and a great pleasure to have,  
7 in an interim sort of capacity, to have served with them in  
8 their programming of funds, and their allocation of budget and  
9 their advising of the Governor on the business of  
10 transportation, the Secretary, and also in their role of  
11 advising the Senate and Assembly on transportation issues.

12 I look forward to continued service.

13 CHAIRMAN BURTON: Senator Lewis.

14 SENATOR LEWIS: I was wondering if you could  
15 share with me your opinion of HOV lanes, in view that there have  
16 been a lot of studies recently. What do you think about whether  
17 or not they're maximizing?

18 MR. ABERNETHY: I could do that on two levels.  
19 One is the personal level, and one is the frustration I see when  
20 I'm driving in a vehicle by myself, and I look over on the left,  
21 and there are others that are rapidly speeding by, but only  
22 occasionally so. Indeed, it's a frustrating experience.

23 I think it's -- they're a lofty objective. There  
24 are federal requirements associated with the receipt of funds  
25 that we have to adopt them.

26 I think that we need to continue to apply  
27 operation research and doing theory analysis to them to fine  
28 tune how they're used, and combine that with a liberal dose of



1 public psychology to understand by use of hours, by use of  
2 definition of what constitutes an HOV vehicle, that we're making  
3 as best use as we can of those lanes.

4 SENATOR LEWIS: A few years ago, Senator Kopp  
5 successfully passed legislation that shortened the STIP from  
6 seven years to four years.

7 My understanding is the Governor, under the  
8 Governor's proposed budget, is suggesting that we go back to the  
9 seven year period.

10 How do you view that? What's the implication of  
11 all this?

12 MR. ABERNETHY: Well, I think that allows us to  
13 put programs into the STIP that we otherwise would not be able  
14 to put in, and begin to do some of the engineering work and  
15 environmental work on them, and begin to make some wise  
16 additional choices on some of the use of the backlog of funds  
17 that we have today that we've been unable to use.

18 SENATOR LEWIS: So, Senator Kopp led us down the  
19 wrong path?

20 MR. ABERNETHY: Is that a Kopp-out question?

21 No, I won't say he led us down the wrong path.  
22 You know, times change, situations change, the economy changes.  
23 He was here then; he's not here now. We have different -- we  
24 have a different economy, a different budget surplus.

25 I think it's appropriate that we consider new  
26 challenges.

27 SENATOR LEWIS: Thank you.

28 CHAIRMAN BURTON: Senator Hughes.

1           SENATOR HUGHES: Thank you very much.

2           Mr. Abernethy, you've been on the Commission for  
3 a while now. This is a question that I asked Mr. Medina when he  
4 first came on board, and I wonder if he has brought it before  
5 your board.

6           What are you going to do, if anything, to adding  
7 consistency to the whole concept of Diamond Lanes, both in  
8 Northern and Southern California? In Southern California, we  
9 have some Diamond Lanes that don't have hours attached. You  
10 have Diamond Lanes in Northern California that have hours  
11 attached.

12           The signs are so small, you barely get to see  
13 that it says the Diamond Lanes, use during certain hours, until  
14 you're right up on the Diamond Lane practically.

15           And why is it some places two passengers or more,  
16 and others three passengers or more?

17           If you're a new driver to the state, how will you  
18 ever learn what a Diamond Lane means if it means different  
19 things in different geographical locations? What value, if any,  
20 is embarked in consistency?

21           MR. ABERNETHY: Senator, here again, I know I'm  
22 very frustrated by Diamond Lanes. I believe that personally, in  
23 that our studying of the use of Diamond Lanes, HOV lanes, in  
24 trying to get the maximum benefit for the dollars that we've  
25 invested in them, and there are some huge amounts of money spent  
26 on their creation, that we need to keep open allowing different  
27 definitions for different Diamond Lanes.

28           If we were to standardize completely, to have one



1 definition that goes across the whole state, all highway  
2 situations, I believe that it would be at a cost that it would  
3 decrease the through-put that we were getting currently on the  
4 Diamond Lanes. Whereas, our objective should be to increase the  
5 number of cars that are being traveled there through careful  
6 study of the operation of those lanes.

7               Clearly, you've described, and you're absolutely  
8 right, that we need better signage for the Diamond Lanes. We  
9 need more frequent signs, more visible, larger signs. I think  
10 that is an item that we need to accomplish.

11               SENATOR HUGHES: Do you have any plans for seeing  
12 that we accomplish that? You personally, as a Member, I'm  
13 asking you. Will that be something that you will be trying to  
14 change?

15               MR. ABERNETHY: Yes, you have given me an idea  
16 today that I hadn't had before that I'm going to go work on.

17               SENATOR HUGHES: Okay.

18               You know, it really boggles my mind when you are  
19 riding by yourself, you're trying to obey the speed limits, and  
20 you see someone over there in the Diamond Lane that doesn't have  
21 the number of passengers that they should have, and they're  
22 abusing it, and they're riding right along. And you can be over  
23 on your side, doing the right thing, and you get the ticket, and  
24 they get free.

25               MR. ABERNETHY: Very frustrating. I've been  
26 there.

27               SENATOR HUGHES: The other question I want to ask  
28 you is, when I drive along, I see that some of the Caltrans land

1 that's adjacent to a freeway is sometimes used for big rigs to  
2 stop their vehicles and stay several hours.

3 What is the procedure? What's the law -- I don't  
4 know, so I'm asking you -- in terms of how many hours they can  
5 stay? Are they just allowed to park there if they're extremely  
6 sleepy to keep from being a hazard on the road? And when  
7 they're close to a local street sometimes they're almost  
8 blocking the passage of the local traffic.

9 Are you aware of that?

10 MR. ABERNETHY: Senator, I do not know the answer  
11 to that question. I will find out and let your office know.

12 SENATOR HUGHES: I gave you a lot of homework.

13 MR. ABERNETHY: Yes, ma'am.

14 SENATOR HUGHES: Thank you.

15 CHAIRMAN BURTON: Senator Knight.

16 SENATOR KNIGHT: Thank you, Mr. Chairman.

17 What's magical about four or seven years for the  
18 STIP?

19 MR. ABERNETHY: I'm not sure that any particular  
20 number is magical.

21 SENATOR KNIGHT: Then why are we trying to go to  
22 seven?

23 MR. ABERNETHY: To allow us to program in  
24 additional highway projects that we wouldn't be able to under  
25 the shorter number of years.

26 SENATOR KNIGHT: Then why not ten years?

27 MR. ABERNETHY: Well, I don't know why not. I  
28 don't know why seven. I didn't choose seven. It seems to me to



1 be an appropriate length of time, but one could have made a  
2 shorter or longer choice.

3           SENATOR KNIGHT: I guess another question, we  
4 have been talking about the Diamond Lanes, and congestion, and  
5 trying to free up congestion. But, you know, I don't see  
6 anybody getting killed on a Diamond Lane, but I've got some  
7 roads that people are getting killed on. And we're having a  
8 heck of a time trying to get those roads widened and improved to  
9 cover safety considerations.

10           Do you have any thoughts about, you know,  
11 budgeting programs on the STIP, et cetera, for two-lane roads  
12 that have become congested to the point where the traffic is  
13 killing people not just stopping them?

14           MR. ABERNETHY: Yes. At our last Commission  
15 meeting, we addressed one particular situation like that and  
16 voted funds to help solve the problem and authorized the taking  
17 of land.

18           I think that's an important ongoing item that we  
19 should be addressing each meeting we have, because I think there  
20 are lots of places across the state where roadway maintenance  
21 that involves safety issues needs to be done, and where  
22 widening, and particularly around curves, needs to take place,  
23 from both of our shop procedures and our STIP procedures that we  
24 need to do on a continuing basis.

25           SENATOR KNIGHT: Which one did you approve last  
26 month?

27           MR. ABERNETHY: I've forgotten the name of it,  
28 but I'll get that to you.

1           SENATOR KNIGHT: Are there considerations for  
2 safety in trying to prioritize various projects? Does safety  
3 have a high consideration in judging those programs?

4           MR. ABERNETHY: Yes, Senator. I think it has a  
5 very important and very essential place.

6           SENATOR KNIGHT: Is it formalized? Is there some  
7 way that, say, I could put in a position paper and indicate that  
8 there is a considerable safety impact here and raise the  
9 priority of some program?

10          MR. ABERNETHY: Yes.

11          SENATOR KNIGHT: That's formalized that safety is  
12 a recognizable consideration?

13          MR. ABERNETHY: It's certainly formalized to the  
14 extent that is a topic that's been in every one of our  
15 Commission meetings, one way or another. It's always there in  
16 our formal agenda.

17          SENATOR COSTA: Senator Knight, I can tell you  
18 from recent experiences, there's several state routes over the  
19 years that have been labeled Blood Alley in your district, in my  
20 district, and elsewhere.

21                 I know just recently, the pass from Kern County  
22 into San Luis Obispo on Shalone, where the famous James Dean was  
23 killed back in the '50s, that has become a big safety hazard.  
24 We've had fatalities and tragic accidents that have occurred  
25 there.

26                 The CTC and the Department of Transportation have  
27 responded. We've put in barriers. We've put in turn-out lanes,  
28 and we've done other safety efforts along with the California



1 Highway Patrol to focus.

2                   So, I know if communities in areas come together,  
3 there is responsiveness on part of the Commission and the  
4 Department to try to deal with those state routes that do get  
5 labeled Blood Alleys. And I think that you'll find this  
6 Commission Member responsive.

7                   SENATOR KNIGHT: Okay.

8                   CHAIRMAN BURTON: Is the counselor's answer  
9 satisfactory to you?

10                  SENATOR KNIGHT: Not necessarily satisfactory,  
11 but it's the only one I'm going to get.

12                  CHAIRMAN BURTON: I'm confused about the four to  
13 seven year deal myself. I know it's not your thing; it's the  
14 Governor's thing, but I'm missing something.

15                  I mean, I would think that what we're trying to  
16 do is expedite a lot of these projects, as opposed to stretching  
17 them out and stretching them out. It just means -- I don't know  
18 what it means. I'll get back to that.

19                  We've got a tremendous problem in many counties  
20 that basically have the local option sales tax. They've  
21 contributed about 18 billion for highways, roadways and transit.  
22 The renewal of these measures are coming up. I think they're  
23 going to start in 2002 just keep going.

24                  If that runs out, or if they're unable by the 66  
25 percent vote to do that, do you have any ideas how we're going  
26 to find the necessary funding to deal what is, I think it's  
27 almost over the next 20 years, close to \$100 billion worth  
28 stuff.

1 Have you been able give much thought to that?

2 MR. ABERNETHY: Yes. Hopefully, we won't have to  
3 find the replacement source for the sales tax dollars.

4 As you, I think, are aware, the Commission is on  
5 record as having supported SCA 3. And I know the problem is  
6 substantial. It is time phased, and it grows as you go  
7 chronologically down the lane.

8 I'm in hopes that we're going to be able to find  
9 a way, one way or another, to allow those -- I think it's 16  
10 counties currently have sales tax overrides that go to  
11 transportation -- to be able to continue them, and allow the  
12 others counties that have not yet adopted them to still have the  
13 feasible and reasonable possibility of adopting them if they  
14 want to do so.

15 CHAIRMAN BURTON: The question's been asked by  
16 two Members about extending the STIP back to seven years, which  
17 I assume takes legislation, which I assume probably won't  
18 happen.

19 But the theory behind that, if you don't mind  
20 repeating it so that Brian can hear it, Bob.

21 MR. ABERNETHY: Sure, and you understand, these  
22 are my own comments.

23 CHAIRMAN BURTON: No, I understand.

24 MR. ABERNETHY: I don't speak for the  
25 administration, and I don't know what's in their mind, and they  
26 haven't told me.

27 But it's my belief that in going from four years  
28 to seven years, it allows us to start the engineering and

1 environmental work on some programs earlier, and therefore, to  
2 bring them on board as useful additions to our state  
3 transportation complex earlier than we otherwise would have  
4 done.

5 It also allows us to have additional choices of  
6 how to use the monies that we've built up wisely now. I mean,  
7 we have the task of having a surplus in several accounts. The  
8 need, I think, to use those funds, but not to rush head-strong,  
9 foolishly, too rapidly, in their use, but to make choices  
10 wisely.

11 And I believe that increasing the STIP from four  
12 years to seven years would help us accomplish these goals.

13 MR. KELLY: Do you want me to ask a question.

14 CHAIRMAN BURTON: Yes, if you don't mind.

15 MR. KELLY: One concern that's been expressed  
16 about that proposal is, the staff level of Caltrans and the  
17 ability or inability of the Department to deliver additional  
18 projects that would be forwarded by extending the STIP.

19 The LAO has suggested that you would have to  
20 increase Caltrans staff significantly to meet the new demand.  
21 And there's fair criticism now that some of the project delivery  
22 things -- some of the projects aren't moving along quickly  
23 enough now.

24 Is there an inconsistency between putting more  
25 projects in a pipeline that all ready seems crowded, to say the  
26 least?

27 MR. ABERNETHY: Certainly it represents a  
28 substantial challenge.



1                   You know, I don't hold a personal opinion, but I  
2 do know that there is a measure on the ballot that's a  
3 Constitutional measure that would, if passed, allow an  
4 alternative to the impact and consider the situation you're  
5 talking about.

6                   So, you know, I don't know what the chances of  
7 that passing or not, nor do I have a personal position on it.

8                   If it were to pass, it would impact the  
9 situation that you're talking about, allow it another  
10 alternative.

11                   CHAIRMAN BURTON: Senator Knight.

12                   SENATOR KNIGHT: Thank you, Mr. Chairman.

13                   To the four or seven years, what that indicates  
14 to me is that you can't finish an project from start to finish  
15 in less than seven years. So, you have to go to the seven years  
16 so that you can get the projects in and out, and you maintain a  
17 certain level of activity within seven years. You bring one on,  
18 and one has to go out.

19                   So, it appears when you go from four to seven  
20 years, we've just extended the time period for doing projects  
21 within the state. That's kind of ludicrous when I've got a  
22 Blood Alley, and people look at it and say, "We've got \$8  
23 billion excess, and you can't fix that highway that's killing  
24 people every week?"

25                   And I say, "Well, it's on the STIP. It'll be  
26 done in 2003 or '04," and they say, "Fine."

27                   I can't tell them that. And that appears to me  
28 what we're doing here.

1 MR. ABERNETHY: Senator, that's not what it  
2 appears to me that we're doing, because I think when you bring  
3 up serious highway safety projects and deaths, and corrections  
4 that need to be done, that need to be done now, and can be done  
5 in a much shorter period than four years.

6 There are a few projects, bigger ones, that  
7 involve tremendous environmental clearances, that involve very  
8 substantial engineering loads, and involve very substantial  
9 federal processes that have to come in series with our work here  
10 in the state, as opposed to in parallel with them, that do take  
11 seven years. I think that's what we're getting at.

12 And one of the things we're trying to work on is  
13 trying to see if we can't get some of those federal processes  
14 lessened, and also to let them run in parallel to our own state  
15 processes to cut back on the time.

16 But you're absolutely right on the questions of  
17 safety and road repair. They need to be done now, this year,  
18 accomplished right away. And I don't believe anybody's  
19 proposing that the kind of things that you and I are concerned  
20 about here be lengthened in time because of this four to seven  
21 year deal.

22 CHAIRMAN BURTON: Senator Hughes.

23 SENATOR HUGHES: Move.

24 CHAIRMAN BURTON: Have you got family here, Bob.

25 MR. ABERNETHY: No.

26 CHAIRMAN BURTON: Witnesses in support.

27 Witnesses in opposition.

28 Call the roll.

1 SECRETARY WEBB: Senator Hughes.

2 SENATOR HUGHES: Aye.

3 SECRETARY WEBB: Hughes Aye. Senator Knight.

4 SENATOR KNIGHT: Aye.

5 SECRETARY WEBB: Knight Aye. Senator Lewis.

6 SENATOR LEWIS: Aye.

7 SECRETARY WEBB: Lewis Aye. Senator Burton.

8 CHAIRMAN BURTON: Aye.

9 SECRETARY WEBB: Burton Aye. Four to zero.

10 CHAIRMAN BURTON: Congratulations.

11 MR. ABERNETHY: Thank you, Senators.

12 CHAIRMAN BURTON: Leave the roll open for Senator  
13 O'Connell.

14 [Thereafter, SENATOR O'CONNELL  
15 added his Aye vote, making the  
16 final vote 5-0 for confirmation.]

17 CHAIRMAN BURTON: Next.

18 MR. HALLISEY: Good afternoon, Senators.

19 SENATOR COSTA: I'm here to support his  
20 confirmation today.

21 CHAIRMAN BURTON: Would you like to comment on  
22 changing Senator Kopp's policies?

23 MR. HALLISEY: On SB 45, I don't, after being  
24 here ten months, purport to be an expert.

25 CHAIRMAN BURTON: I thought Senator Kopp told me  
26 that you helped draft that.

27 MR. HALLISEY: No, that's not correct. Bob  
28 Wolfe, I think, helped draft it.



1 CHAIRMAN BURTON: Didn't you help Bob Wolfe draft  
2 it?

3 MR. HALLISEY: No, I didn't know Bob Wolfe at the  
4 time.

5 I think maybe there should be some modifications  
6 in it to give the state more flexibility in vital funding needs,  
7 and probably should be revisited.

8 CHAIRMAN BURTON: Why don't you open with a  
9 statement.

10 MR. HALLISEY: I mean, I really don't have any  
11 statement. I guess either voting for me or against me, you're  
12 buying into a philosophy of, you know, what you're voting for.

13 Over the last 10 to 15 years, we've had an \$11  
14 million -- 11 million person increase in population. We're  
15 probably going to have the same or more over the next 10 to 20  
16 years, and you've got to be voting for a person who has some  
17 hope of trying to solve the problem.

18 The way I think you solve the problem is a  
19 combination of a lot of things. We have highway projects.  
20 We've only built, I think -- 20 years ago we had 15,000 miles of  
21 state highways and interstates. Now we have something like  
22 15,400. So, there's been very little money spent on road  
23 construction in the state.

24 And it's a little bit disingenuous for people to  
25 say that highways don't solve problems when they haven't been  
26 built, and the population and vehicle numbers, and vehicle miles  
27 have been driven.

28 I think you need public transit, especially in

1 the urban areas, to solve some of the problems. I think you  
2 need HOV lanes to a certain extent, if they're rationally  
3 controlled.

4 I agree with Senator Hughes that I'd be very  
5 skeptical of 24-hour programs. I think they have to be closely  
6 monitored and responded to if the traffic is unfavorable.

7 So, that's sort of my approach, and I don't have  
8 any, you know, philosophical program that I'm bringing to this.

9 I think we're sort of foolish, be Republicans or  
10 Democrats, to fight about philosophy. We're really just talking  
11 about moving people and what the best way of doing that is.

12 CHAIRMAN BURTON: I think the question Senator  
13 Hughes raised, I haven't figured it out, either. Some places  
14 you get two in a car, some places three. I kind of like it when  
15 you can just be one and shoot right down.

16 Then, of course, there's the ongoing problem that  
17 you may run into when you go back to the Bay Area from here,  
18 where even against traffic, they've got a Diamond Lane. In  
19 other words, I think it makes sense to have a Diamond Lane when  
20 you're going where the traffic is, but --

21 MR. HALLISEY: I think that's probably foolish.

22 CHAIRMAN BURTON: -- you have that whole deal  
23 right when you get to Pinole that nobody's in, and everybody's  
24 bumper-to-bumper. I think that was part of a lawsuit with City  
25 of Berkeley when they did whatever the hell they did down at the  
26 mud flats.

27 Does Caltrans or the Commission have anything to  
28 do with -- for a while it was like, I think, seven in the

1 morning until ten at night, or six in the morning until ten at  
2 night. Now, we've got it, I think, three to seven and something  
3 else.

4 But I still think that it doesn't make any sense  
5 to have that when there's not a hell of a lot of traffic.

6 MR. HALLISEY: I agree completely, and it only  
7 infuriates people against the possibility of using them.

8 CHAIRMAN BURTON: Who's got the authority in  
9 that?

10 MR. HALLISEY: I assume it's Caltrans.

11 CHAIRMAN BURTON: Somebody's nodding. We'll get  
12 to you after.

13 They ought to just figure that one out. And I  
14 know at one time it was a court, there was some kind of deal,  
15 and we forced them to modify that, and I'd like to force them  
16 even more, those of us who go back to the Bay Area during that  
17 time.

18 What kind of influence, and this is kind of an  
19 odd question coming after yesterday's press conference, but what  
20 kind of influence can the Commission have on the appointing  
21 authority to encourage the appointing authority to see that  
22 there are serious problems here?

23 And the bandaaid approach that I read about in the  
24 San Jose Mercury today -- which is a billion dollars, and maybe  
25 two billion in bonds, and I doubt if any bonds will make the  
26 ballot -- you know, to solve what's going to be a hell of a  
27 problem?

28 MR. HALLISEY: Well, I mean, I agree with



1 everyone that more money has to be spent on transportation.  
2 We're near the bottom of the parade among states, and I don't  
3 believe you can get a new fighter plane for the price of a Piper  
4 Cub. And I don't think you can get, you know, an educated  
5 school kid for \$3,000 versus \$10,000 per student.

6 So, we have to spend more money. And how do we  
7 go about it, whether it's general obligation bonds, GARVEE  
8 bonds, TIFIA bonds, increasing gasoline tax.

9 I mean, I think the Legislature, if they want to  
10 handle that one, could increase the gasoline tax to solve the  
11 problem.

12 CHAIRMAN BURTON: Well, the Legislature was very  
13 close to putting something on the ballot until the Governor  
14 decided that he didn't like it.

15 I think with the surplus that we have, and with  
16 the type of things that some of our Republican colleagues were  
17 looking for in the Assembly, that we were very, very close to  
18 being able to put something to the ballot that then got chopped  
19 out.

20 Now, the GARVEE bonds, and I carried the GARVEE  
21 bond bill, we are limited in GARVEE bonds to a certain  
22 percentage that would let us front-load.

23 The problem with doing it all at once, you get  
24 Board of Supervisors friendly to Developer A, and they'll spend  
25 all -- they could spend all of the money on two of their  
26 favorite projects. Within six years from now, there's a new  
27 project coming, and there's no money because it all got spent  
28 there, which was actually an issue raised by Chairman Johnston

1 in the Appropriation Committee. So, that isn't a way out.

2 MR. HALLISEY: There's -- general obligation  
3 bonds are certainly a possibility.

4 CHAIRMAN BURTON: Well, what, 50 billion?

5 MR. HALLISEY: We can start with six or eight and  
6 try that for a while and see if that works.

7 I mean, there's no question that substantial  
8 amounts of money have to be spent. In a survey by CTC, it was  
9 talking 100 billion. The Round Table was talking about another  
10 15 to 25 billion above what is actually going to be funded as  
11 needed to be spent.

12 You know, something's got to be done. You're  
13 going to have more people here, and it ain't going to be done  
14 cheaply.

15 CHAIRMAN BURTON: And I had a bond bill that was  
16 16 billion over four elections -- four, four, four, and four --  
17 which even that, one, I mean, the cost of servicing the bonds  
18 was a big hit. Selling the bonds would take time. Passage of  
19 the bonds, the first one, I think this year you could pass  
20 anything because everybody's happy. If the economy goes in the  
21 toilet, you couldn't pass anything like that. And it would not  
22 be able to start moving on the problems.

23 The only is solution I see is an SCA type  
24 solution to let the locals, let the people vote on whether or  
25 not the locals want to do this. And then my theory about  
26 government is, if the people don't want it, God bless them;  
27 don't come writing to me about your stuff.

28 But I know that the Commission's been supportive

1 of, I think, been more farsighted in this than the appointing  
2 power. But at some point --

3 MR. HALLISEY: Well, Senator, with respect to the  
4 sales tax locally, I mean, I don't think with the exception of  
5 Alameda County, I'm not sure there's really any emergency, in  
6 that I think the next one is 2005 in San Benito and in Santa  
7 Clara County. And then it's after, you know, 8, 9 and 10 years.  
8 So, there's some breathing room to see if we can sell the public  
9 on both --

10 CHAIRMAN BURTON: You ain't going to sell the  
11 public when you've got the chief executive saying that the idea  
12 doesn't make any sense, when really he's got nothing to do with  
13 it. It's between the Legislature and the people.

14 And we also have counties that don't have  
15 anything cooking that are going to want to do it, and if you get  
16 up, which I had the great privilege of doing just last Friday in  
17 the rain, going from Novato to Santa Rosa, which is about 22  
18 miles in an hour and 10 minutes. Nothing better than that.

19 MR. HALLISEY: Right, but those two counties  
20 that, or at least with respect to Marin in 1962, they withdrew  
21 from the rapid transit district. They've failed to pass, I  
22 think even by 50 percent -- this is a wealthy county, probably  
23 the wealthiest in the state, and has not passed it. They're in  
24 the low 40s on these sales tax measures.

25 CHAIRMAN BURTON: Your position is that we  
26 shouldn't put it before the people or what?

27 MR. HALLISEY: Well, no. I think they need to be  
28 sold.



1 CHAIRMAN BURTON: You can't sell people something  
2 that ain't performed. You put it up --

3 MR. HALLISEY: They don't --

4 CHAIRMAN BURTON: You put it up on a statewide  
5 basis. They vote up or down.

6 MR. HALLISEY: No, they don't have sales tax  
7 that's been --

8 CHAIRMAN BURTON: We're not talking about only  
9 the 16 counties. There's 58 counties here, which means -- what  
10 is 16 from 58, Colonel -- I think leaves 42.

11 MR. HALLISEY: Right.

12 CHAIRMAN BURTON: And the thing is, there ain't  
13 nothing going to happen on bonds; there ain't nothing going to  
14 be happening on extending the STIP.

15 There ain't nothing going to be happening until  
16 we can convince the appointing power of not the wisdom, but the  
17 equity in not getting in the way of the people in the  
18 Legislature, giving them the opportunity to vote on something.

19 And my only concern is whether or not -- and I  
20 know the limits that, you know, that a commission has, trying to  
21 change the mind of the appointing power -- but the appointing  
22 power's going to have to deal with something or the appointing  
23 power is going to have nothing to deal with.

24 MR. HALLISEY: I agree with --

25 CHAIRMAN BURTON: And I'm just grateful that the  
26 two Commissioners here today are personal friends. Would they  
27 be strangers, you wouldn't even have a hearing.

28 [Laughter.]

1 MR. HALLISEY: I agree with your basic position.

2 And I would respectfully suggest that, let's wait  
3 until the plan is developed over the next 30 days, and let's see  
4 if we can sit down and work out something with respect to bond  
5 funding or bringing a measure before the voters, or what have  
6 you.

7 CHAIRMAN BURTON: If what I read in the San Jose  
8 Mercury is anything, I mean, that's like putting a bandaid on  
9 somebody suffering from hemophilia.

10 Senator Knight then Senator Hughes.

11 SENATOR KNIGHT: I don't have anything. It's  
12 interesting listening. I'm glad that he's a personal friend of  
13 yours.

14 [Laughter.]

15 SENATOR HUGHES: Are you going to help your  
16 colleague find the answers to my stupid questions, which I think  
17 are logical questions, on the HOV lanes?

18 MR. HALLISEY: Yes is the short answer.

19 SENATOR HUGHES: And also on the big rigs parked  
20 on Caltrans strips that block part of the access road for other  
21 vehicles? I mean, I don't know how that happens. It seems to  
22 me as though you ought to find out the answer just for your own  
23 general knowledge?

24 MR. HALLISEY: I agree with that.

25 SENATOR HUGHES: Thank you.

26 I move him.

27 CHAIRMAN BURTON: Did Senator Kopp send a letter  
28 of support?

1 MR. HALLISEY: No, he didn't.

2 CHAIRMAN BURTON: Witnesses in support.

3 Witnesses in opposition.

4 Which one are you?

5 MR. BAKER: Support, sorry about that,

6 Mr. Chairman.

7 Steve Baker with Aaron Read and Associates,

8 representing the Professional Engineers in California

9 Government.

10 They've had an opportunity to work with  
11 Mr. Hallisey on a variety of things, and they've had a good  
12 experience, and encourage his support.

13 Thank you.

14 CHAIRMAN BURTON: Any other witnesses?

15 Moved by Senator Hughes. Call the roll.

16 SECRETARY WEBB: Senator Hughes.

17 SENATOR HUGHES: Aye.

18 SECRETARY WEBB: Hughes Aye. Senator Knight.

19 SENATOR KNIGHT: Aye.

20 SECRETARY WEBB: Knight Aye. Senator Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye.

23 CHAIRMAN BURTON: We'll hold the roll open.

24 Congratulations.

25 MR. HALLISEY: Thank you, Senator.

26 [Thereafter, SENATOR O'CONNELL

27 and SENATOR LEWIS added Aye

28 votes, making the final vote



1 5-0 for confirmation.]

2 CHAIRMAN BURTON: Sean Harrigan.

3 It's my great pleasure to introduce my friend,  
4 Sean Harrigan, whose appointment to the PERS Board --

5 MR. HARRIGAN: State Personnel Board. I'm on the  
6 PERS Board.

7 CHAIRMAN BURTON: You've got two of them.

8 MR. HARRIGAN: Well, there's one person from the  
9 State Personnel Board that's on PERS.

10 CHAIRMAN BURTON: I stand by my statement.

11 He is a good friend of mine.

12 Go ahead, Sean.

13 MR. HARRIGAN: I'm not going to be long.

14 First of all, it is a pleasure to be here today,  
15 and to be before this respected group.

16 Just a little bit about my background. I'm not  
17 going to go through the whole thing. I just want to briefly  
18 touch on my experience in labor management relations.

19 I have been a representative of employees for 27  
20 years in a number of capacities. Was a business agent,  
21 organizer for a local, president of a local, assistant director  
22 in a region, director of a region, assistant director to the  
23 international director of organizing.

24 I've dealt with literally thousands of grievances  
25 and disputes involving employees and employers. I've been  
26 involved in the collective bargaining process for 24 of my 27  
27 years.

28 I have a thorough understanding of labor

1 management relations, and I am pleased to be serving on the  
2 State Personnel Board.

3 CHAIRMAN BURTON: Senator Knight. Senator  
4 Hughes.

5 SENATOR HUGHES: No questions.

6 No objections, move the nomination.

7 CHAIRMAN BURTON: Moved by Senator Hughes.

8 Family? Support?

9 MR. RANKIN: Tom Rankin, California Labor  
10 Federation.

11 Sean has a lot of experience to bring to the  
12 State Personnel Board and also to the PERS Board in terms of  
13 his experience with pension investments.

14 I think it's -- he'll bring balance to the State  
15 Personnel Board. The last labor person I remember on the  
16 Personnel Board -- John probably knew him -- was Bob Ash from  
17 the Alameda Labor Council, I think, back in the 1960s.

18 CHAIRMAN BURTON: God rest his soul.

19 Aaron.

20 MR. READ: Thank you, Mr. Chairman and Members.  
21 Aaron Read representing the CHP Association, CDF Firefighters,  
22 Professional Engineers in California Government.

23 We are very delighted to support Sean Harrigan  
24 for both the SPB and I know he's the new member on the PERS  
25 Board.

26 He brings a lot of enthusiasm, interest, and  
27 knowledge that has been lacking. We're very excited to support  
28 him.

1 CHAIRMAN BURTON: Witnesses in opposition?

2 Hearing none, call the roll.

3 SECRETARY WEBB: Senator Hughes.

4 SENATOR HUGHES: Aye.

5 SECRETARY WEBB: Hughes Aye. Senator Knight.

6 SENATOR KNIGHT: Aye.

7 SECRETARY WEBB: Knight Aye. Senator O'Connell.

8 SENATOR O'CONNELL: Aye.

9 SECRETARY WEBB: O'Connell Aye. Senator Burton.

10 CHAIRMAN BURTON: Aye.

11 SECRETARY WEBB: Burton Aye. Four to zero.

12 CHAIRMAN BURTON: Leave the roll open for Senator

13 Lewis.

14 Congratulations, Sean.

15 MR. HARRIGAN: Thank you.

16 [Thereafter, SENATOR LEWIS

17 added his Aye vote, making the

18 final vote 5-0 for confirmation.]

19 [Thereupon this portion of the

20 Senate Rules Committee hearing was

21 terminated at approximately 2:21 P.M.]

22 --ooOoo--



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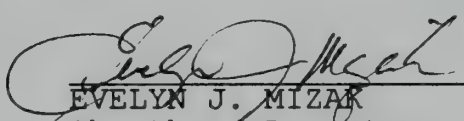
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

2<sup>nd</sup> day of March, 2000.

  
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APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR JOE BACA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

SENATOR JACK O'CONNELL

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

DORENE D'ADAMO, Member  
Air Resources Board

SENATOR DICK MONTEITH

ASSEMBLYMAN DENNIS CARDOZA

SENATOR JIM COSTA

SANDRA SPELLISCY  
Planning and Conservation League

BILL PAULI  
California Farm Bureau





1 MANUEL CUNHA, President  
2 Nisei Farmers League

3 ED MANNING  
4 Western States Petroleum Association

5 MARY-ANN WARMERDAM  
6 California Farm Bureau Federation

7 MICHAEL S. BERNICK, Director  
8 Department of Employment Development

9 PATRICK JOHNSTON

10 JIM HARD, Director  
11 Civil Service Division  
12 CSEA

13 TOM RANKIN  
14 California Labor Federation

15 CHUCK CENTER  
16 California Council of Laborers

17 SCOTT HAUPE, Vice President  
18 Small Business Network in San Francisco

19 DON HARPER  
20 California Association of Veteran Service Agencies

21 VIRGINIA HAMILTON  
22 California Workforce Association

23 ALLEN DAVENPORT  
24 Service Employees International Union

25 ROY GABRIEL  
26 California Farm Bureau Federation

27 ART NALDOZA  
28 La Cooperativa Campesina de California

FRANK RAMIREZ  
American GI Forum





1 DAVID VILLARINO, National Director  
2 Collective Bargaining  
3 United Farm Workers, AFL-CIO

4 JOHN MOLINA, President  
5 Union Label, Sacramento

6 HOWARD OWENS  
7 Congress of California Seniors  
8 Consumer Federation of California

9 MIKE CURRAN, Executive Director  
10 NOVA Private Industry Council, Silicon Valley

11 MIGUEL NAVARRETTE  
12 Café de California

13 MATTHEW R. MCKINNON, Member  
14 Air Resources Board

15 BARRY BROAD  
16 Teamsters and Amalgamated Transit Union

17 ART CARTER  
18 California Pipe Trades Council  
19 State Association of Electrical Workers  
20 Western States Sheetmetal Workers Union

21 WILLIE PELOTE  
22 American Federation of State, County and Municipal Employees

23 BILL CAMP  
24 Sacramento Central Labor Council

25 FELICE PACE  
26 Klamath Forest Alliance

27 ROBERT PERNELL, Member  
28 State Energy Resources Conservation and Development Commission

SENATOR STEVE PEACE

JAN SHORI, General Manager  
Sacramento Municipal Utility District

JOE WINSTEAD  
California State Pipe Trades Council



1 EDDIE BERNACCHI  
2 National Electrical Contractors Association  
3 California Legislative Conference of the Plumbing,  
4 Heating and Piping Industry

5 ROBERT CLINE  
6 Electric and Gas Industries Association

7 KAREN EDSON  
8 Independent Energy Producers Association

9 HOWARD POSNER  
10 SMUD Board of Directors

11 STEVE BAKER  
12 California Association of Professional Scientists

13 CRAIG JONES  
14 Small Business Owner

15 LINDA DAVIS  
16 SMUD Board of Directors

17 WARREN MENDEL  
18 Southern California Contractors Association

19 JOHN WHITE  
20 Sierra Club  
21 Clean Power Campaign

22 TIM CREMINS  
23 Operating Engineers  
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## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Senator Monteith.

SENATOR MONTEITH: Chairman Burton and Members, I've known Dee Dee for 15 years, and I've worked with her on a variety of air quality issues facing the San Joaquin Valley. Some of those issues have been the impact of growth on air quality, and other issues have been mobile source issues.

Since being appointed to the Air Board last August, Dee Dee has helped to craft creative solutions to complex issues including the MTBE phase in.

CHAIRMAN BURTON: Phase in or phase out?

SENATOR MONTEITH: Phase out.

Actually, Dee Dee and I have not always agreed, but she has always been very fair, always listened, and I am in full support of her appointment.

Thank you.

MS. D'ADAMO: Thank you, Senator Monteith.

Mr. Chairman, Members, Senator Costa had expressed an interest in being here today as well. It looks like he's running a few minutes behind schedule. With your permission, I'll continue.

Thank you very much for the opportunity to appear before the Senate Rules Committee. I am honored and privileged that the Governor appointed me to serve as the legal representative on the Air Resources Board. I'm proud to be associated with a body that's highly regarded throughout this nation for being a leader in the effort of air quality.

1 I've been serving on the Board since last August  
2 and already have had the opportunity to participate in several  
3 significant Board decisions. One of the first actions to come  
4 before me as a new member of the Board was the phase out of MTBE  
5 in gasoline. I am pleased that the Board's action implemented  
6 the Governor's Executive Order and the direction of the  
7 Legislature, while at the same time preserving the air quality  
8 benefits of reformulated gasoline.

9 I'm also pleased to have played a role in the  
10 consensus of the Board's action last month that will cut  
11 emissions from the state's urban bus fleet. I believe that both  
12 of those actions reflect a balanced consensus and an approach  
13 that best achieves our state's clean air goals.

14 By way of personal background, I am a native  
15 Californian, raised in Napa. I earned my Bachelor's Degree at  
16 the University of California at Davis, and I received my law  
17 degree from the University of the Pacific, McGeorge School of  
18 Law.

19 I served as legislative staff as well as  
20 committee staff for the Joint Committee on Prison Construction  
21 and Operations.

22 After being admitted to the State Bar, I served  
23 as legal counsel to the Assembly Committee on Public Safety  
24 until 1987, when I was appointed Assistant Director to the  
25 California Youth Authority.

26 In 1989, I joined Congressman Condit's  
27 Washington, D.C. staff as Legislative Director, then returned to  
28 California to practice law in the private sector in 1991.

1           My current position as legal counsel for  
2 Congressman Condit, as well as my previous work for the Western  
3 Ancient Forests Campaign, and environmental policy land use  
4 instructor at California State University at Stanislaus, has  
5 enabled me to pursue my environmental interests professionally.

6           Through these positions I have had the  
7 opportunity to work in depth on a wide range of agricultural and  
8 environmental issues, including air quality issues, and have  
9 come to the conclusion that the achievement of our state's air  
10 quality goals can best be achieved with the development of  
11 programs that encourage compliance from the regulated community.

12           I believe that the swiftest progress toward these  
13 goals begins with fairness in the regulatory process, first of  
14 all by ensuring full public participation in the development of  
15 the Board's programs, and secondly, by clearly identifying the  
16 steps that industry will need to take.

17           As the attorney representative to the Air  
18 Resources Board, I believe that it is my duty to ensure all  
19 participants are provided with due process and fairness in the  
20 regulatory process. I believe that meeting the standard can  
21 best help to foster an environment in which consensus among  
22 affected industry stakeholders and environmental interests can  
23 emerge, as was I believe to be the case with the MTBE phase out  
24 and the urban bus fleet regulation.

25           On a more personal note, I would like to add that  
26 as a mother of three small children that are here with me today,  
27 who are being raised in the San Joaquin Valley, an area which,  
28 unfortunately, ranks as one of the most polluted air quality



1 regions in the nation, I am extremely passionate about the need  
2 to protect and enhance California's public health, particularly  
3 amongst the most vulnerable populations of our society,  
4 children, the elderly, and those with health risks.

5 I consider service on the Air Resources Board to  
6 be a great responsibility as well as a tremendous opportunity to  
7 make a true and meaningful contribution to achieving clean air  
8 for all Californians. I look forward to continuing to work with  
9 with the administration and the Legislature on this shared goal.

10 Once again, Mr. Chairman, Members, thank you for  
11 the opportunity to appear before you today, and I would be happy  
12 to respond to any questions that you may have.

13 CHAIRMAN BURTON: Where are we with the MTBE  
14 deal? I'm not sure about this. I know that the Legislature was  
15 moving toward either and abolition or a quick phase out. Then  
16 the Governor slowed down the phase out.

17 What happened?

18 MS. D'ADAMO: Actually, I believe that what  
19 occurred was that the Legislature adopted legislation that  
20 required a phase out, and the Governor initially, upon taking  
21 office, issued an Executive Order that was similar.

22 And the real challenge that was before the Air  
23 Board was to phase out MTBE while, at the same time, maintaining  
24 the air quality benefits of MTBE. It had good air quality  
25 benefits.

26 So, that phase out has been adopted, consistent  
27 with the direction of the Legislature and the Executive Order.  
28 And at this point, the focus seems to be to obtain a waiver in

1 Congress for the oxygenate requirement that is required under  
2 the Federal Clean Air Act.

3 CHAIRMAN BURTON: There wasn't some kind of  
4 pull-back?

5 MS. D'ADAMO: No, no.

6 CHAIRMAN BURTON: Will can you comment just  
7 briefly on the, quote, "environmental justice" issue? What do  
8 you think the air boards in general should do to address that?

9 MS. D'ADAMO: Certainly, Senator.

10 Environmental justice is an issue that is of  
11 great concern to me personally because, as a mother of, as I  
12 said, three small children, I have a tremendous empathy for  
13 those who want to not be forced to leave their communities, but  
14 to improve the conditions of their community in terms of  
15 environmental quality.

16 I think that the Air Board is on the right  
17 track. What we need to do is get a better grapple of the  
18 situation, particularly in communities that seem to be faced  
19 with cumulative impacts from multiple sources.

20 Once we get a better handle on the data, in fact,  
21 there are several areas throughout the state that are currently  
22 undergoing monitoring studies, then I think that'll put us in a  
23 better position to make determinations as to how to deal with  
24 this very important issue.

25 CHAIRMAN BURTON: What are the air boards doing?  
26 The MTBE problem, a lot of it in the water with the jet skis and  
27 personal water craft, and, I guess, two-stroke engines or  
28 something, but what efforts or actions should or has the Board

1 taken to try to deal with this, especially in the lakes and  
2 reservoirs?

3 MS. D'ADAMO: Right.

4 With regard to the two-stroke engines, I believe  
5 that the Air Board adopted a regulation on that prior to me  
6 joining the Air Board. Two-stroke engines are not -- were not  
7 outlawed, but instead, a regulation was adopted that would  
8 provide for cleaner burning engines.

9 And it's my understanding, as something that  
10 occurs in many different sectors of technology, the engine  
11 manufacturers appear to be in line to meet that deadline, and in  
12 fact, quite a few are putting equipment on line that meets that  
13 standard prior to the mandated time frame.

14 CHAIRMAN BURTON: How are you going to wear the  
15 Air Board hat and Gary Condit's Central Valley water hat, and  
16 the CALFED things? In one instance, you're kind of involved,  
17 although it's this regional air board, but with a state  
18 responsibility. But when you're dealing on your role as  
19 basically representative on the CALFED thing, does that ever  
20 give you headaches? Do you have trouble changing hats on  
21 occasion to be more of a statewide?

22 You're looking for the Valley's interest on one  
23 instance, and the state's on the other. And God forbid you  
24 could confuse the two.

25 MS. D'ADAMO: I think, first of all, it's helpful  
26 that they are different issues. With this not being a water  
27 board, that helps in that regard.

28 As the legal representative, I am not



1 representing the Central Valley, although I bring the concerns  
2 of the Central Valley with regard to air quality issues with me  
3 when I make Board decisions. But I am representing the state as  
4 a whole on air quality issues. And our number one mandate is to  
5 protect the public health. That not only is something I view as  
6 my duty, but something I feel strongly about.

7               Sometimes I am going to have to shift gears and  
8 wear my other hat, as you indicated. I need to make it clear  
9 when I am in one arena, if I have dealt with individuals on, say  
10 for example, if I'm working for the Congressman on air issues,  
11 and I happen to be engaging in conversations with individuals  
12 that I have will also dealt with on air quality issues, I need  
13 to make it clear that I am representing the Congressman. And  
14 that is something I've been doing since being appointed in  
15 August.

16               CHAIRMAN BURTON: Senator Lewis.

17               SENATOR LEWIS: There's \$50 million in the  
18 Governor's budget for the older bus replacement program.

19               The LAO, apparently, has been somewhat critical  
20 of the administration, saying that it's lacking in terms of  
21 goals or criteria, and whether or not there should be a focus on  
22 replacement of the buses, or just retrofitting, and also whether  
23 or not there should be a requirement for local government match.

24               What kind of response does the ARB have right now  
25 to the LAO report?

26               MS. D'ADAMO: Well, I know that our staff has  
27 been working with Budget staff in Legislature on this issue.

28               My main concern on this issue is, first of all, I



1 am really pleased to see the \$50 million being proposed by the  
2 Governor on this issue.

3 When the urban bus fleet regulation was before us  
4 a couple of months ago, we did receive quite a bit of what I  
5 would consider to be compelling testimony of the need to address  
6 the most vulnerable segment of our society, or one of the most,  
7 and that's children that are exposed to the particulate matter  
8 from diesel exhaust.

9 As much as they made that compelling argument,  
10 however, it was difficult to include that issue in the  
11 regulation because of the high cost, which is the number one  
12 issue that stands in the way of converting over.

13 So, I'm pleased to see that the Governor has made  
14 this proposal. I fully support it, and it's my hope that we can  
15 try and structure those funds in such a way that we can convert  
16 over as many buses in the quickest amount of time possible. And  
17 I know that our staff is committed to working with the  
18 Legislature and the administration on that goal.

19 SENATOR LEWIS: How do the numbers work out in  
20 terms of comparison of retrofitting versus just bus replacement?

21 MS. D'ADAMO: I believe that bus replacement for  
22 compressed natural gas would be in the neighborhood of 300  
23 buses. I may be off.

24 But retrofit, if we were to do solely retrofit  
25 and not compressed natural gas, would be more in the  
26 neighborhood, I believe of somewhere between 8-10,000 buses.  
27 Perhaps there'd be a combination and criteria that would laid  
28 out, so that in some instances there would be purchases of new

1 buses, as opposed to others that would be, you know, a little  
2 bit more compelling for straight retrofit.

3 CHAIRMAN BURTON: Senator Hughes.

4 SENATOR HUGHES: The bus question.

5 L.A. County alone could absorb the 50 million.  
6 Do you think that that's enough money, because the poor public  
7 transportation that we have, because of the number of old cars  
8 that we have in the poorer communities, that people need to use  
9 to get their children to school?

10 How do you think the 50 million is going to go?  
11 And is it going to be anywhere near sufficient? If you had to  
12 advise the Governor, what would you ask him, and advise the  
13 Legislature, because we are here now? Do you think that's  
14 enough money?

15 MS. D'ADAMO: Senator, I would, first off,  
16 compliment the Governor for recognizing that this is a crucial  
17 issue and say, good job on a first -- first step. We need to,  
18 obviously, go much further than this, and I'm hoping that this  
19 is the beginning of many appropriations to come in this area.

20 Because I agree with you, 50 million, although if  
21 we went with retrofit, it would go quite a ways, but there are  
22 going to be situations that would call for, perhaps, another  
23 approach. And there's going to be a greater need, I agree.

24 SENATOR HUGHES: As a member of the Air Resources  
25 Board, how do you plan to address the environmental justice  
26 issue?

27 MS. D'ADAMO: Yes, Senator. As I indicated  
28 earlier --

1                   SENATOR HUGHES: I just want you to repeat it so  
2 I'm sure that I heard it right.

3                   MS. D'ADAMO: Sure.

4                   I believe that the Air Board is on the right  
5 approach, and that is, there are several monitoring projects  
6 that are you under way. We need to get a better grapple on this  
7 issue in terms of the scientific data that's out there.

8                   My gut feeling is that there -- and you would  
9 know better than I would, representing these areas -- there are  
10 communities that are impacted in a tremendous way as a result of  
11 not just one pollution source, but the cumulative impact.  
12 Something definitely needs to be done about it.

13                   I think that we're going to be better position to  
14 be able to respond if we can have that data.

15                   The data will also produce, I'm hoping, another  
16 result, and that is that industry, regulated industry, that may  
17 not be regulated to the extent that would resolve the problem in  
18 a given community, once that information is available to the  
19 public, I think that it's going to help them, put them in a  
20 better position to come up to the plate and respond to the  
21 issues that affect certain communities.

22                   SENATOR HUGHES: Thank you.

23                   CHAIRMAN BURTON: Before we have any more  
24 questions, I see Assemblyman Cardoza and Senator Costa, who I  
25 think briefly would like to announce their support and get about  
26 their business.

27                   ASSEMBLYMAN CARDOZA: Thank you very much,  
28 Senator. It's truly a pleasure to be here to testify on behalf



1 of Dee Dee Moosikian.

2 We started off as staff people together several  
3 years ago. And I've got to tell you that she was much more  
4 talented than I was. I'm glad to see that she's getting  
5 recognized.

6 She's effective in everything she's attempted,  
7 including being a wonderful parent. I very much respect her and  
8 encourage her confirmation.

9 CHAIRMAN BURTON: Thank you.

10 Senator.

11 SENATOR COSTA: Thank you very much, Members of  
12 the Senate Rules Committee.

13 I've worked with Dee Dee for a number of years on  
14 a host of issues. And I think what we look for in appointments  
15 in important boards and commissions in California are people  
16 that are forthright, people that do their homework, and people  
17 that are problem solvers. I think this individual brings all of  
18 those capabilities to this Air Resources Board.

19 And her ability to balance a host of diverse  
20 responsibilities has been proven in the past, and I see no  
21 reason why she won't be very capable in doing that in the  
22 future.

23 I wholeheartedly support her confirmation.

24 CHAIRMAN BURTON: Thank you, Senator.

25 Senator Knight, do you have any questions?

26 SENATOR KNIGHT: I do not have any questions.

27 CHAIRMAN BURTON: Senator O'Connell.

28 SENATOR O'CONNELL: Would you like a motion?



1 I'll make a motion.

2 CHAIRMAN BURTON: Your family, you said, was  
3 here?

4 MS. D'ADAMO: Yes, Senator.

5 Before introducing them, though, I would like to  
6 thank Senator Costa, Senator Monteith, and Assemblyman Cardoza.  
7 I have a very high level of respect and admiration for all three  
8 of you, and I thank you very much for being here with me today.

9 I'd like to introduce my family, if I may. My  
10 husband, Berge Moosikian; my parents, Joe and Iris D'Adamo.

11 And I've got my three children there in the back,  
12 too: Audriana, Marissa, and Ara. They're outside. The reason  
13 they're outside is, I have a two-year-old, and he'd be quite  
14 disruptive.

15 And then I'm really honored to have my  
16 grandmother here with me today, and it's her birthday, Julia  
17 Santis, and there she is.

18 CHAIRMAN BURTON: Well, you make it easy, don't  
19 you. We'd probably better confirm, huh?

20 Senator Lewis was waiting for one more compliment  
21 to the Governor though.

22 [Laughter.]

23 CHAIRMAN BURTON: Witnesses in support, briefly.  
24 It's grandma's birthday; we're going to do it. Name and  
25 organization.

26 MS. SPELLISCY: Mr. Chairman and Members, Sandra  
27 Spelliscy with the Planning and Conservation League.

28 Very pleased to support the appointment. We've

1 worked with Ms. D'Adamo in the past year, and we're looking  
2 forward to a continued relationship with her.

3 Thank you.

4 MR. PAULI: Good afternoon, Senator. Bill  
5 Pauli, Farm Bureau.

6 On behalf of our members and many others up and  
7 down the great State of California, we certainly are here to  
8 support her confirmation. She's bright, articulate, and will do  
9 a tremendous job for the State of California.

10 Thank you, Senators.

11 MR. CUNHA: Senators, Chairman, Manuel Cunha,  
12 President of the Nisei Farmers League, also a member of the  
13 United States Department of Agriculture, USDA Air Quality Task  
14 Force.

15 We've had a great opportunity in agriculture,  
16 working with Dee Dee over the past years. And we give her our  
17 total support as well as other ag. groups in the San Joaquin  
18 Valley and those down in Imperial Valley as well.

19 She's done an outstanding job, and wearing both  
20 hats, Senator, she has done a great job in moving both of those  
21 things.

22 But again, we give her our total support. Thank  
23 you, Dee Dee.

24 CHAIRMAN BURTON: We'll tip at least one of the  
25 hats.

26 MR. MANNING: Ed Manning on behalf of the  
27 Western States Petroleum Association.

28 We work closely with Ms. D'Adamo and others, and

1 she's shown great leadership already on the Board. We look  
2 forward to working with her in the future.

3 MS. WARMERDAM: Mr. Chairman, Members, my name is  
4 Mary-Ann Warmerdam. I'm with the California Farm Bureau  
5 Federation.

6 We've enjoyed our working relationship, and we'd  
7 encourage you to vote aye on her confirmation.

8 CHAIRMAN BURTON: Any witnesses in opposition?

9 Moved by Senator O'Connell, call the roll.

10 SECRETARY WEBB: Senator Hughes.

11 SENATOR HUGHES: Aye.

12 SECRETARY WEBB: Hughes Aye. Senator Knight.

13 SENATOR KNIGHT: Aye.

14 SECRETARY WEBB: Knight Aye. Senator O'Connell.

15 SENATOR O'CONNELL: Aye.

16 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

17 SENATOR LEWIS: Aye.

18 SECRETARY WEBB: Lewis Aye. Senator Burton.

19 CHAIRMAN BURTON: Aye.

20 SECRETARY WEBB: Burton Aye. Five to zero.

21 CHAIRMAN BURTON: Congratulations, Dee Dee.

22 MS. D'ADAMO: Thank you very much.

23 CHAIRMAN BURTON: Director of the Employment  
24 Development Department, Michael Bernick.

25 MR. BERNICK: Mr. Chairman, Fran Burton says to  
26 keep it under 90 seconds, and I'm going to.

27 I think I've set out a number of the goals and  
28 objectives in this piece. I would just say that I've been



1 involved in job training for over 20 years. I ran a job  
2 training group in the late '70s through the mid-80s. Since the  
3 mid-80s, I've been a volunteer board member of more than a dozen  
4 of our job training groups in the Bay Area.

5 So, if there's one thing I think I bring, it's a  
6 sense how job training, and how our programs work on a very  
7 local level, on a community based organization level.

8 When I talked to the Governor after the election,  
9 this was the only job I talked to him about. EDD is a great  
10 department.

11 CHAIRMAN BURTON: Senator Johnston.

12 SENATOR JOHNSTON: Mr. Chairman and Members,  
13 I've worked with Mr. Bernick since his appointment. I've found  
14 him quite solicitous of legislative input and very committed to  
15 the role that the Legislature must play in constructing a  
16 workforce investment system that serves the range of citizens of  
17 California in need of such services.

18 Obviously, the Employment Development Department  
19 has a lot of other responsibilities, and in those, the  
20 Department is well served by many of the staff who've been there  
21 a long time.

22 But the leadership that we now have, I think,  
23 will give new emphasis to this effort that we must all engage in  
24 to make sure that people can be trained for jobs, whether  
25 they're leaving welfare, or whether they're at the other end of  
26 the scale and have good skills but need other skills in order to  
27 succeed in this economy.

28 So, I would recommend Mr. Bernick highly to you



1 for confirmation, and I think that he represents the best of  
2 this administration in terms of recognizing the relationship  
3 between the Legislature and the administration in sharing the  
4 responsibilities, particularly in these areas of employment.

5 Thank you.

6 CHAIRMAN BURTON: Thank you, Senator.

7 Go ahead.

8 MR. BERNICK: To wrap up, I appreciate that,  
9 Senator.

10 I was saying that is the one job that I talked or  
11 spoke to the Governor about after the election because it is a  
12 department that's great in a number of ways and, I think, has a  
13 lot of resources to approach some of the issues that you've been  
14 working on for many, many years. In part it's great because of  
15 its size; in part it's great because people have come to us  
16 because of their interest in employment.

17 It's a department with a great sense of mission  
18 as well as sense of history. And among ourselves, our 12,000  
19 employees, we disagree on issues, and there's still a lot of  
20 issues we have to work out internally, and we are. But I think  
21 people are bonded by that department, or come to us because of  
22 their belief that work is dignity, that employment is central,  
23 and there's a lot we can do.

24 Indeed, having been involved for many years, this  
25 is such an amazing time, an amazing time we have. Unemployment  
26 statewide is 4.6 percent. But even more so, unemployment in  
27 virtually all the urban areas is below 3 percent, with the  
28 exception of L.A. County, which is 5.6 percent, but we have

1 opportunity now, especially in our urban areas, to attack a lot  
2 of the long-term issues.

3 As I tried to lay out here, California workers  
4 with disabilities, how to gets them into the labor market,  
5 Welfare to Work, especially the skills upgrading,  
6 apprenticeships in the so-called working poor, we have a lot of  
7 opportunities now that we've never had. We have a rare window.

8 We also have a rare window, I think, to do some  
9 things in terms of the ag. workforce.

10 I know you may want to ask questions. I'd only  
11 also point out, even though job training is a main part of the  
12 department, the great bulk of our workforce is in tax, UI, DI.  
13 These are exciting areas, important areas, we're looking at ways  
14 both of, in terms of improving services, through the Governor's  
15 whole initiative on e-government, through anti-fraud, through a  
16 number of measures.

17 I know you mainly want to ask questions.

18 CHAIRMAN BURTON: Can you explain the foul-up on  
19 establishing the disability rate at the beginning of the year  
20 that was established at a number that would have made it  
21 insolvent? Then it took, I think, in my judgment, action or  
22 efforts by the Legislature as well as labor organizations to get  
23 it reviewed.

24 Where did the direction come to come up with an  
25 artificially low number?

26 MR. BERNICK: Well, you know, under statute, the  
27 EDD Director sets the rate. So, and we set it at one point in  
28 the year.

1                   So, there was great interest on the part of the  
2 department as well as the administration.

3                   CHAIRMAN BURTON: It was clearly an inadequate  
4 thing. Was the direction a mistake?

5                   MR. BERNICK: I think the general thing was that,  
6 you know, can we do anything to prevent raising of a rate which  
7 involves taking more money out of people's pay checks. So, you  
8 know, we have made projections in the past. Some have been  
9 accurate; some have not been accurate.

10                  So we decided, let's see as long as we can to  
11 make sure that we really have to raise the rate. This fund is  
12 going to become at least insolvent or close to insolvent. So,  
13 we waited until February, when it then became clear that if we  
14 didn't raise the rate --

15                  CHAIRMAN BURTON: I think you waited until  
16 February until the heat got too hot, in my opinion.

17                  MR. BERNICK: No, I think what is fair to say is  
18 that there was a big push to do everything possible not to raise  
19 any rate that would take -- because raising the rate basically  
20 means we're taking --

21                  CHAIRMAN BURTON: We know what it does, but we  
22 know what the law requires. The law requires the rate to  
23 reflect enough coming in so that the system is not insolvent.  
24 That's what the law requires, as I understand it.

25                  And the tremendous number of people employed  
26 meant more people, conceivably, eligible for DI, which meant  
27 more money going out, and you had to have --

28                  MR. BERNICK: Also more money coming in.



CHAIRMAN BURTON: Right, but you had the rate, you know, it seemed to me that the cards would have said, you have to raise the rate up to keep it there.

It was kept down. Then the Legislature, I think there was letters sent by the leadership. I think Senator Solis and Johnston, and I don't know who on the other side, and then it went up.

I don't want to have to do that every time the law requires something to be done, not just by you, Michael. We find it with a ton of agencies. So, you know, it happened.

Hopefully, the next time, they'll do it according to the law, and not according to some political dictates.

The department, and I don't know if this is your responsibility or the people before, but you're required to submit a DI Fund forecast to us in May and October. And the most recent one we have received was October, '98, dated December 28th, and there were no forecasts in the year of '99.

Was that oversight? What was that one?

MR. BERNICK: No, no. We had, you know, you're right. By statute, there is a certain process set out.

We had our forecast, as you point out. It's such an extraordinary economy. You have far more people in the labor force.

But you're right. Gives more people at risk of taking use of it, but puts far more money into the fund.

CHAIRMAN BURTON: The law requires these reports.  
Why weren't they given to us?

MR. BERNICK: I believe they were given.



1 CHAIRMAN BURTON: Well, I believe they weren't.

2 MR. BERNICK: With our forecast.

3 CHAIRMAN BURTON: Again, you're not the only  
4 department. Speaker Designate Hertzberg had the Fish and Game  
5 Committee before him, because we put these reports in the law  
6 for some reason, and then everybody ignores them.

7 I would just hope that you do your best to get  
8 them to send us reports.

9 I think the other thing is, if you can't, or it's  
10 too much trouble, then during the budget hearings on your  
11 budget, you just say, you know, "You require us to do this, and  
12 it makes more sense to change the timeframe and only do one,  
13 give some leeway," and I think that'd be fine. I mean, nobody  
14 wants to make you do something that you can't do.

15 But if you can't do it, or we tell you to do  
16 something stupid, which is not beyond the realm, that you tell  
17 us that, you know, like, it's better if we do it this way and  
18 once a year, or whatever.

19 Now, just a couple questions. The voluntary plan  
20 employers who set the rates no higher than those set by EDD,  
21 they dropped their plans when the contribution rate was set at  
22 the erroneous 5 percent. Now that it's increased to 7, how are  
23 you going to address the concerns of these employers who dropped  
24 out but may want to get back in at the 7 rate?

25 MR. BERNICK: As soon as we increased the rate,  
26 literally the same day, we started the process to contact the  
27 voluntary plans who had dropped out. And also to set up the  
28 most simple and expeditious process for them to go in.

1 CHAIRMAN BURTON: You're working on that one.

2 MR. BERNICK: Believe me, it's a top priority.

3 CHAIRMAN BURTON: When you set it at the 5, how  
4 many plans, or how soon did those voluntary plans start dropping  
5 out?

6 MR. BERNICK: We've always had some plans drop in  
7 and out, 22.

8 CHAIRMAN BURTON: Did that maybe send you a  
9 message, maybe something's wrong?

10 MR. BERNICK: Well, the voluntary plans contacted  
11 us very, very quickly.

12 CHAIRMAN BURTON: Did that give you an idea  
13 something was wrong?

14 MR. BERNICK: It told us that, you know, we had  
15 to look at it, and we may need an adjustment, but consistent  
16 with you know what.

17 CHAIRMAN BURTON: And then no action was taken,  
18 so you set it at 5 percent in January.

19 MR. BERNICK: We actually didn't set it all. It  
20 just continued --

21 CHAIRMAN BURTON: You just left it, so you set it  
22 at 5.

23 MR. BERNICK: Yeah. We just basically delayed  
24 the decision to set it.

25 CHAIRMAN BURTON: No, you left it, which set it.  
26 It wasn't a delay of the decision.

27 Then the voluntaries dropped out. Then the  
28 Legislature and the administration, or administration received

1 comments for action by the Legislature and organized labor. And  
2 then, beginning April 1st, it went to 7.

3               Soon to be Senator Kuehl introduced a bill to  
4 extend SDI to state employees.

5               What's your position on extending SDI to state  
6 employees?

7               MR. BERNICK: We're in the process of looking at  
8 that now. As you know, it's previously been for private  
9 employees.

10              CHAIRMAN BURTON: That's why she introduced a  
11 bill.

12              MR. BERNICK: I know, I understand. We're still  
13 looking at it. We have no position.

14              CHAIRMAN BURTON: Do you make the position, or  
15 does Finance make the position, or does the Governor's Office  
16 make the position? How does the process work?

17              MR. BERNICK: Seriously, it's tripartide. You  
18 know, we get together with Finance and the Governor's Office.

19              CHAIRMAN BURTON: Who's got the swing vote?

20                               [Laughter.]

21              CHAIRMAN BURTON: Just one last one, then  
22 Senator Hughes.

23              In recent years, EDD changed the method of  
24 delivering UI services to individuals, and they have basically  
25 technology replacing in person with basically telephone filing.

26              Do they make available at either the regional or  
27 district centers phones for people that, like, actually either  
28 don't have phones, one, and then, do you make aware to them that



1 they've got a phone to utilize on that?

2 MR. BERNICK: Two things real quick on it.

3 There has been a movement previously to move both  
4 UI and DI to more of a phone based system, which has its own, I  
5 think, advantages for a great number of people. It just makes  
6 it much easier to get on the phone rather than go down to EDD  
7 and wait.

8 We do have two things. We have provision in each  
9 office so that we have individuals who know about the process so  
10 that individual questions can be asked, and we do have the phone  
11 system. So, if you go into a one-stop, you can not only pick up  
12 the phone and call UI, but you can ask someone at the desk a  
13 specific question.

14 CHAIRMAN BURTON: When they call on the phone, do  
15 you know what happens? Do you get like a please hold? Do you  
16 know the number you're calling? How does it work?

17 MR. BERNICK: The way it should work is that  
18 they're able to get a question --

19 CHAIRMAN BURTON: How does it; do you know?

20 MR. BERNICK: You know, these are issues that  
21 we're continuing to try to improve.

22 CHAIRMAN BURTON: So, you're staffed  
23 sufficiently? Or electronic, when you call, where ever you call  
24 these days, and you get nothing but computers.

25 If you could kind of us let us know back like how  
26 long the average wait, or whether they can get to them right  
27 away, or if you need more people to field it.

28 Lastly, the Governor's talking about earmarking



1 35 million in Welfare to Work funds, and 15 million in federal  
2 funds to recruitment and retention training of workers in  
3 nursing homes, and for IHSS.

4 Do you know how you're going to spend that money?

5 MR. BERNICK: No, we're working with the Health  
6 and Welfare Agency to develop a program.

7 CHAIRMAN BURTON: Do you know what the wages will  
8 be for the people in that?

9 MR. BERNICK: Well, that's the challenge. Right  
10 now, those home health aides make about \$7.50 to \$80 an hour for  
11 jobs that are physically, psychologically demanding. So, the  
12 result is, you get a huge turnover of people. They come in and  
13 out.

14 And the employers are very dissatisfied who we've  
15 met with, and the unions are very dissatisfied. These are very  
16 low, low wages.

17 Independently of that, as a department we've been  
18 working with the Governor's Office on a whole new form of  
19 apprenticeships, is there some way to stabilize the workforce by  
20 providing upward mobility. In other words, take the same  
21 apprenticeship model that we have and that has worked so well in  
22 the building and craft trades, and apply that to a health model.  
23 That, it seems to me, is ultimately the way you have to go.

24 You can only stabilize that workforce if you give  
25 people a chance to move up.

26 CHAIRMAN BURTON: You may have apprentice in-home  
27 support services --

28 MR. BERNICK: You take something like home health

1 aides. So, right now, somebody starts as a home health aid, and  
2 there's not that much -- it's basically a stand-alone job.  
3 There's not that much opportunity.

4 So what happens? So people come in and out.  
5 They work for a short time.

6 CHAIRMAN BURTON: You'll train them to be nurses?

7 MR. BERNICK: Well, since there's a variety of  
8 jobs below RN, between RN and home health aid, is there some way  
9 you can have people work, and through the same thing as the  
10 craft approach, working on the job, learning on the job, getting  
11 certifications, be able to move up in wages, you know,  
12 responsibility; most of all in wages.

13 CHAIRMAN BURTON: Senator Lewis.

14 SENATOR LEWIS: No questions.

15 CHAIRMAN BURTON: Senator Hughes.

16 SENATOR HUGHES: We're in the third year of a  
17 five-year grant from the U.S. Department of Labor on the School  
18 to Work Opportunities Act.

19 I've always been curious, and never gotten the  
20 answer to this, what do you do with helping the students who are  
21 in high school, to help them to enter employment? Everybody  
22 helps the student in high school that's getting ready to go to  
23 college, one way or the other. They help them enough, or they  
24 don't help them enough.

25 What do you do to help the regular person in  
26 terms of making them aware of jobs that are available, what  
27 their choices, are and especially since you're dealing with a  
28 very anxious, mature population that is in a great dilemma,

1 where do they go? What does your agency do to help them?

2 MR. BERNICK: Basically, we have four things, but  
3 I think there's a lot more that we're looking at doing. You  
4 know, it's very interesting. We've had a long-term plan, a  
5 program that's Regional Occupation Program, to get people work  
6 part-time, so it's been going on for a long time. It's actually  
7 very successful, and EDD's been involved in it.

8 But, you know, under the name of progress, the  
9 last decade or so, people have said, oh, this doesn't work, and  
10 so forth. And they've started this whole thing called School to  
11 Career, where most of that money, in my view, has gone far too  
12 much with just simply administration. Whereas, this regional  
13 plan has direct.

14 What we've tried to do is direct the money more  
15 to specific internships or movement in, direct money more in  
16 terms of specific programs that take people who aren't going to  
17 college. We have one now with the Hollywood Entertainment  
18 Museum to train people for the entertainment industry, perhaps.  
19 There's a whole variety of jobs we have in that.

20 We have the YEOP Program, you know, peers, but if  
21 you're asking me, my sense is that we need to continue to look  
22 both at improving skills and also working with employers to try  
23 to alter somewhat the structure of the job market, in other  
24 words, so that you don't have jobs that are basically  
25 stand-alone, like home health aid or these others, and that  
26 don't lead anywhere.

27 SENATOR HUGHES: Thank you.

28 CHAIRMAN BURTON: Senator Knight.



1                   SENATOR HUGHES: May I cast a vote and move his  
2 appointment, and go to Health.

3                   CHAIRMAN BURTON: Yes.

4                   SENATOR KNIGHT: My understanding as to how you  
5 set the rates, and you also indicated that you didn't change the  
6 rates. You just left them the way they were the first part of  
7 the year.

8                   I thought there was a statutory formula that was  
9 to be used to set the rate. Did that formula then justify the  
10 rate that you left?

11                  MR. BERNICK: Right. Under statute, the EDD  
12 Director, based on formula, sets the rate once a year.

13                  By the time it was October or November, we had  
14 some projections of what we thought the solvency of the fund  
15 would be. But meanwhile --

16                  SENATOR KNIGHT: Did the formula indicate that?

17                  MR. BERNICK: When you say the formula,  
18 basically, we have an economy that's going gang-busters beyond  
19 anyone's expectation.

20                  SENATOR KNIGHT: Is there a formula that you use  
21 to establish the rate?

22                  MR. BERNICK: Well, there is a formula that we  
23 use.

24                  SENATOR KNIGHT: Did we use it?

25                  MR. BERNICK: We used it, sure.

26                  SENATOR KNIGHT: And it came out --

27                  MR. BERNICK: Well, it came out based on what  
28 your projections are of the solvency of the fund.



1 Right now, we raised it to .7, so there's one  
2 hundred million plus projected at the end of the year for the  
3 fund. The fund should be in good shape.

4 You know, given the strong economy, it could well  
5 even go over that.

6 I can only say on that, this is such a strange  
7 economic time in terms of the unemployment rate.

8 CHAIRMAN BURTON: It's clear that for whatever  
9 reason, somebody didn't want to raise the rates. It had nothing  
10 to do with mathematics. It had nothing to do with the statute.  
11 It had nothing to do with the projections, because as soon as  
12 they were forced to really take look at it, the rates were  
13 raised. So, it wasn't that complicated once the heat got put  
14 on.

15 Senator O'Connell.

16 SENATOR O'CONNELL: Move.

17 CHAIRMAN BURTON: It's been moved by Senator  
18 Hughes. Call the roll.

19 I'm sorry, do you have your family here, Mike?

20 MR. BERNICK: No, they're back in San Francisco.

21 CHAIRMAN BURTON: Witnesses in support, briefly.

22 MR. HARD: Senator Burton, Members of the Rules  
23 Committee, my name's Jim Hard. I am the Civil Service Division  
24 Director for CSEA. We represent about ten of the twelve  
25 thousand workers that Michael directs.

26 I'd like to say that recent communications have  
27 caused us to take the position that we do not oppose his  
28 confirmation, and we're betting on his courage to face the very

1 difficult issues in this department and resolve them.

2 Thank you.

3 CHAIRMAN BURTON: Like there's some bombs  
4 somewhere that he's got to defuse? What are these dangerous  
5 issues.

6 MR. HARD: Did I say dangerous? I think I  
7 said --

8 CHAIRMAN BURTON: Is there any other kind? Grave  
9 danger. Whatever it was, difficult.

10 MR. HARD: Yes, difficult.

11 CHAIRMAN BURTON: Like what?

12 MR. HARD: Like the rate of decisions that an  
13 eligibility worker has to make every day to give the employer  
14 community a quality determination of eligibility and carry out  
15 the law, as you were just referring to. Or give the unemployed  
16 individual the fair break and the proper decision based on all  
17 the facts.

18 That is a very fundamental issue in the  
19 department. And it's a difficult one because it's what the  
20 department's budget is based on.

21 So, these are very difficult things to deal with  
22 from anybody's point of view, and when you have leftover  
23 Wilsonites hanging around, it makes it even more difficult.

24 I could go on.

25 [Laughter.]

26 CHAIRMAN BURTON: You've got two leftover  
27 Wilsonites here. Maybe even three; who knows?

28 MR. RANKIN: Tom Rankin, California Labor

1 Federation, here to support the confirmation of Michael Bernick.

2 As Senator Burton pointed out, we did have some  
3 problems regarding the DI tax rate. I think those are past, and  
4 I hope that the lessons were learned.

5 We have had for the first time, I think, in 16  
6 years, a door opened to us in EDD that was closed before. And  
7 we've worked very closely with Michael on job training issues  
8 and on issues of the underground economy. And we are looking  
9 forward to working with him on the issue of the UI benefit  
10 increase.

11 CHAIRMAN BURTON: Thank you.

12 MR. CENTER: Thank you. Chuck Center with the  
13 California State Council of Laborers.

14 We're supporting Director Bernick and also for  
15 the job training areas but also specifically for the underground  
16 economy enforcement area. We appreciate the activity he's  
17 expressed in there by activating additional staff to the task  
18 force to implement Senator Johnston's original legislation and  
19 your continuing legislation, SB 319. We appreciate working with  
20 Mr. Bernick in the future.

21 Thank you.

22 MR. HAUPE: My name is Scott Haupe. I'm a small  
23 business owner and the Vice President of the Small Business  
24 Network in San Francisco.

25 And we're here to support the appointment of  
26 Michael Bernick.

27 As most of you know, the issue of a skilled  
28 workforce is probably the number one issue for small business.



1 And Mr. Bernick has -- when he got the initial appointment, came  
2 to us very early on and asked for our input as to what small  
3 businesses were looking for, and has been working with us for  
4 about the last year.

5 The other aspect of the Small Business Network  
6 is, we put together a Welfare to Work program called Job  
7 Network, which is the model program for small business in the  
8 United States. We're going to be moving the next step into  
9 career development, and it's very important to our program in  
10 San Francisco, and I believe small business's ability to hire  
11 people on welfare that we work very closely with EDD.

12 Thank you.

13 CHAIRMAN BURTON: Is there any opposition to this  
14 appointment? How about those supporters just come up, name,  
15 rank, and leave your serial number out.

16 MR. HARPER: Good morning, Mr. Chairman and  
17 Members of the Committee. I'm a veteran, so I think I can do  
18 that.

19 My name is Don Harper, and I'm President of the  
20 California Association of Veteran Service Agencies.

21 We've had a long relationship with this  
22 gentleman, and we support this. It'll be good for the Governor  
23 and for everyone here.

24 CHAIRMAN BURTON: We have a full agenda. You can  
25 leave out the salutations, too.

26 MS. HAMILTON: Virginia Hamilton, California  
27 Workforce Association.

28 We support the confirmation of Michael Bernick.



1 CHAIRMAN BURTON: Thank you.

2 MR. DAVENPORT: Allen Davenport with the Service  
3 Employees International Union supporting.

4 MR. CUNHA: Manuel Cunha, President of the Nisei  
5 Farmers League, and we would like the support of Michael  
6 Bernick.

7 Thank you.

8 CHAIRMAN BURTON: Thank you.

9 MR. GABRIEL: Roy Gabriel, representing the  
10 California Farm Bureau Federation. Support.

11 MR. NALDOZA: Art Naldoza, representing La  
12 Cooperativa in support.

13 MR. RAMIREZ: Frank Ramirez, representing the  
14 American GI Forum in support of Michael Bernick's appointment.

15 MR. VILLARINO: My name is David Villarino. I'm  
16 with the United Farm Workers, National Director for Collective  
17 Bargaining. And I'm here to support the nomination of Michael  
18 Bernick for EDD Director.

19 MR. MOLINA: John Molina, President of the Union  
20 Label, Sacramento. I'm here in support of him.

21 MR. OWENS: I'm Howard Owens. The Congress of  
22 California Seniors supports this nomination.

23 MR. CURRAN: I'm Mike Curran, Executive Director  
24 of the NOVA Private Industry Council in Silicon Valley,  
25 supporting Michael's appointment.

26 MR. NAVARRETTE: Miguel Navarrette, representing  
27 Cafe de California, a state workers association, very much in  
28 support.

1 CHAIRMAN BURTON: Witnesses in opposition?

2 Moved by Senator Hughes, call the roll.

3 SECRETARY WEBB: Senator Hughes. Senator Knight.

4 Senator O'Connell.

5 SENATOR O'CONNELL: Aye.

6 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

7 SENATOR LEWIS: Aye.

8 SECRETARY WEBB: Lewis Aye. Senator Burton.

9 CHAIRMAN BURTON: Aye.

10 SECRETARY WEBB: Burton Aye. For Senator Hughes,  
11 add Aye. Four to zero.

12 CHAIRMAN BURTON: Congratulations.

13 Matthew McKinnon, State Air Resources Board.

14 SENATOR O'CONNELL: Mr. Chairman and Members,  
15 Matt McKinnon is currently before us for the Air Resources  
16 Board. He's a product of the San Diego school system, including  
17 the public school system in San Diego, as well as the community  
18 college system.

19 He then showed the good judgment to transfer to  
20 Cal Poly in San Luis Obispo, where he also enjoyed success,  
21 returned to San Diego to have numerous occupations and jobs,  
22 including Health and Safety for the California Labor Federation,  
23 the machinists in the San Diego area.

24 He's bringing a unique background and experience  
25 to this position, has been able to generate wide spread support  
26 from the business community, including California Manufacturers  
27 Association, CEEB, Californians for Economic and Environmental  
28 Balance. He has the support of the labor community as well.

1 Senior organizations have backed him as well as the  
2 environmental community, both the Sierra Club, the League of  
3 Conservation Voters.

4 He's also received numerous awards, most recently  
5 last year in Ventura, Santa Barbara, San Francisco County. He  
6 was recognized for being the Labor Leader of the Year. He's  
7 traveled extensively throughout California, has a very good  
8 grasp on issues throughout our state.

9 I share with enthusiasm Governor Davis' potential  
10 for Matt in this position.

11 MR. MCKINNON: Thank you, Senator O'Connell.

12 Good afternoon, Senator Burton and Committee  
13 Members.

14 I'm honored to appear before you today to  
15 consider my confirmation to the Air Resources Board. I consider  
16 it a great privilege to receive your consideration and that of  
17 the Governor.

18 I consider the appointment as one of the two  
19 public members as particularly a position of responsibility, and  
20 I think we are well charged to protect the health and safety of  
21 the people of the State of California while keeping an eye on  
22 the California economy.

23 I fully support the Governor's concern for the  
24 quality of air. And during our first board meeting, we dealt  
25 with the MTBE issue. Since that time, we dealt with consumer  
26 products, and it was in the process of dealing with consumer  
27 products that I really formed kind of a direction that I want to  
28 make sure that I disclose at this hearing today.



1           And during the process of dealing with consumer  
2 products, we began to regulate a foaming hair mousse.

3           And in the process of regulating the foaming hair  
4 mousse, and clearly, consumer products needed to be regulated,  
5 there needed to be changes, I began to evaluate how much and how  
6 many interests in our state have worked hard to sacrifice to  
7 make sure that the quality of the air was improved, with one  
8 notable exception. And that notable exception, I believe, is  
9 that we have a long, long, long ways to go in dealing with  
10 diesel emissions. Most of the problem left to deal with.

11           So most recently, the Board addressed the transit  
12 bus issue. And in that approach, rather than fully working on a  
13 CNG path, there were three alternatives put into place. And I  
14 think in many, many ways, that describes how I would like to  
15 approach this Board.

16           We need to keep competition between fuels. We  
17 need to keep competition between technologies, and we've gained  
18 a great deal in this state in terms of working things that way.  
19 And as we approach diesel, there's major, major improvements we  
20 can make.

21           I'm also very enthusiastic about some of the  
22 other technologies that I have been involved in, supporting  
23 zero-emission vehicles for a long, long time, since the very  
24 beginning. And most recently, have not had much activity on  
25 that, but I'm very, very interested in the progress that the ZEV  
26 mandates pushed. A lot of technology was moved forward by  
27 developing zero-emission vehicles.

28           We currently are headed into dealing with the



1 school bus transit issue. And we have a great deal of work to  
2 go. And I understood from questions earlier there's some  
3 concerns about the direction that goes.

4 I believe that the \$50 million will fix about 800  
5 buses with particulate trap technology. And it may be that 800  
6 buses is the most we could do in a first year, just because  
7 there's a lot of thinking to do about how you fit retrofit  
8 technology to existing buses in existing engines. So, it may  
9 well be that that 800 is a fair first year's approach. It  
10 certainly does not get us through 17,000 buses in the State of  
11 California.

12 SENATOR LEWIS: Question.

13 You were in the room when Dee Dee D'Adamo, I  
14 asked her the question about retrofitting versus replacement,  
15 and she gave some figure on the number of buses that could be  
16 retrofitted. I think it was in excess of 10,000.

17 MR. McKINNON: I think there's a digit slip  
18 there. Instead of 8,000, it's 800, unless I did something wrong  
19 with my math. But I think the first sweep of it, it's more like  
20 800.

21 CHAIRMAN BURTON: That's retrofit, not  
22 replacement --

23 MR. McKINNON: That's retrofit.

24 Now, replacement, I think you get, if you do CNG,  
25 you're talking 340 buses. If you do kind of traditional  
26 technology but enhanced engines, better diesel engines, that  
27 kind of thing, you're talk about 520 buses.

28 So, I tend to favor moving the most coverage of

1 kids as possible. So, I think diesel retrofitting is the  
2 direction to go, but I don't think you get very many done in a  
3 hurry.

4 One thing about diesel retrofitting technology  
5 that's about to happen is, the Europeans are about to adopt, I  
6 think by 2005, it'll be in trucking in Europe. So, the retrofit  
7 technology cost is going to go way, way down because of  
8 economies of scale. Instead of like producing a few thousand  
9 particulate traps for California, it'll be 20,000 in Europe and  
10 some in Hong Kong, and some in other places.

11 As time goes on, the cost may go down.

12 SENATOR LEWIS: In your initial comment, you made  
13 some comment about CNG, where it sounded like you were somewhat  
14 dismissive of that as an alternative. Is that based on cost, or  
15 is there something else?

16 MR. MCKINNON: Well, yeah, if I sounded that way,  
17 it's not intentional. I think it's good to have different fuels  
18 competing. I think that's a good thing.

19 I do worry about the cost. Mostly it's an  
20 infrastructure cost question, because you have to put in  
21 infrastructure for CNG.

22 SENATOR LEWIS: But there was nothing else other  
23 than cost that you were alluding to?

24 MR. MCKINNON: No.

25 CHAIRMAN BURTON: This 50 million, is it grants,  
26 is it loans, is it like shared cost, or what? Or is that up to  
27 us?

28 MR. MCKINNON: I don't know, Senator.

1                   CHAIRMAN BURTON: In other words, he puts up 50  
2 million, and I guess that it's in the budget, so we could  
3 determine grants, shared cost, or whatever.

4                   Would you know what is the deal with diesel? Why  
5 diesel?

6                   I remember just watching trucks going up I-80  
7 with that stuff coming.

8                   Was it just at one time a cheaper gas? Better  
9 gas mileage?

10                  MR. McKINNON: The engines run cooler. They last  
11 a long time.

12                  CHAIRMAN BURTON: Better for the engine.

13                  MR. McKINNON: They last a long time.

14                  And if you have low sulfur diesel, you can do a  
15 lot to clean up what comes out of that smoke stack, a tremendous  
16 amount, like 80 percent of it.

17                  You know, clearly there hasn't been the political  
18 will, and frankly with trucking, you're talking you really have  
19 to change the low sulfur content nationally for it to work,  
20 because you have trucks going across borders and that kind of  
21 thing.

22                  CHAIRMAN BURTON: I think we'd rather do that  
23 than do than have to, at some point, either change truck stop  
24 engines, or maybe get whatever it is.

25                  With a wishy Legislature like us, like last year  
26 we gave them a lot of money so they could do it, which made a  
27 lot of sense to me, to give United Parcel taxpayers' money so  
28 they could get cleaner diesels.



1 Senator Hughes.

2 SENATOR HUGHES: No questions.

3 CHAIRMAN BURTON: Senator Knight. Senator  
4 O'Connell.

5 SENATOR O'CONNELL: I just noticed on the \$50  
6 million program, it's designed to be a grant program to the air  
7 districts, and the air districts, in turn, to the school  
8 districts. It's for 1977 and prior.

9 CHAIRMAN BURTON: Do you think that's a smart way  
10 to do it?

11 SENATOR O'CONNELL: I don't know.

12 CHAIRMAN BURTON: Can't you see all the lobbying?

13 SENATOR O'CONNELL: Although, not all buses would  
14 qualify. It's post-'77 buses.

15 CHAIRMAN BURTON: Each Senators' district office.

16 SENATOR O'CONNELL: To distribute. Our own  
17 version of the Lottery.

18 CHAIRMAN BURTON: Exactly.

19 MR. McKINNON: Senator, at the first run at it,  
20 you may want to do something like that just to make sure that  
21 when people match the technology with particular engine and  
22 chassis, they do it best way so that in the future, you don't  
23 spend a lot of money doing it.

24 CHAIRMAN BURTON: Probably the districts are more  
25 qualified to do that kind of stuff? Maybe not.

26 MR. McKINNON: It may actually be ARB. They have  
27 a good facility down south that does a lot of mechanical work  
28 that thinks about things like that.



1 CHAIRMAN BURTON: Did you bring any family?

2 MR. McKINNON: I did. I'd like to introduce my  
3 wife and partner in life, Jody Ansel. My father, Bob McKinnon,  
4 came up from Carlsbad today.

5 CHAIRMAN BURTON: Witnesses in support, briefly.  
6 Name, rank, and serial numbers.

7 MR. RANKIN: Tom Rankin, California Labor  
8 Federation.

9 MR. BROAD: Barry Broad, Teamsters and  
10 Amalgamated Transit Union.

11 MR. OWENS: Howard Owens, Consumer Federation of  
12 California.

13 MR. CARTER: Art Carter, California Pipe Trades  
14 Council, State Association of Electrical Workers, and the  
15 Western States Sheetmetal Worker Union.

16 MR. CENTER: Chuck Center, Laborers Union.

17 MR. MANNING: Ed Manning, Western States  
18 Petroleum Association.

19 MR. PELOTE: Willie Pelote, American Federation  
20 of State, County, and Municipal Employees.

21 MR. DAVENPORT: Allen Davenport with the Service  
22 Employees International Union.

23 MS. SPELLISCY: Sandra Spelliscy, Planning and  
24 Conservation League.

25 MR. CAMP: Bill Camp with the Sacramento Central  
26 Labor Council. He's one of our members.

27 CHAIRMAN BURTON: Anyone in opposition.

28 SENATOR HUGHES: Move the nomination.

1 MR. PACE: Good afternoon. My name is Felice  
2 Pace. I've worked for the Klamath Forest and represent the  
3 Klamath Forest Alliance, a community-based group out of Etna,  
4 Siskiyou County.

5 As a life long Democrat and a labor supporter,  
6 I'm delighted when I see folks from labor appointed to these  
7 boards that deal with the environment.

8 I would hope, however, that in a Democratic  
9 administration with a Democratic Legislature, we'd see  
10 appointments to the environmental boards from the ranks of  
11 progressive labor which recognizes the key importance to the  
12 economy and the welfare of workers of a clean environment,  
13 including clean air and clean water.

14 Now, I want to call to your attention as a  
15 citizen, I want folks on these boards to be independent,  
16 particularly of the regulated community, the community that they  
17 have to regulate, usually industrial communities.

18 In this regard, I want to bring to your attention  
19 a letter dated March 9th, 2000. Mr. McKinnon is one of four  
20 signatures on this letter. It's a letter to the California  
21 Board of Forestry from the Forest Products Industry, National  
22 Labor Management Committee letterhead, and the subject is  
23 protection for threatened and impaired watersheds 2000.

24 I want to quote two small things, if I may, from  
25 this letter. "The proposed rules rely heavily on a scientific  
26 review panel report. This report was a compilation of public  
27 input that is little more than an opinion poll."

28 That scientific review panel, the scientific

1 committee, was appointed jointly by the California Department of  
2 Forestry and Fire Protection, and the National Marine Fisheries  
3 Service and its distinguished scientists. And trashing good  
4 science is something I don't think we need to do on an Air  
5 Resources Board.

6 I'd also like to quote, "Therefore," this is  
7 toward the end, "even on an interim basis we do not support the  
8 implementation of streamside buffer zones," and it adds, "that  
9 are not science-driven and are inflexible."

10 These rules are supposed to respond to the crisis  
11 that we have with salmon and steelhead in our rivers, and the  
12 crisis of coastal communities and the fishermen that depend on  
13 those, and the workers that depend on those. It's supposed to  
14 deal with impaired watersheds where we're not meeting, and  
15 haven't met, our own criteria that we set up through the basin  
16 plans.

17 And basically, you know, in addition to that, the  
18 timber industry, which has stonewalled these, and we worked for  
19 six months on these rules, and then they said no deal and  
20 rewrote them today or last night, in the back rooms, this is not  
21 the kind of person I think we need sitting on these boards.

22 And I'm very concerned about the fact that  
23 burning is very important to these timber companies that are  
24 behind this. That's an issue that is of great concern, and  
25 there's a lot of trade-offs there, and there's a lot of money at  
26 risk in who gets to burn what in the Central Valley and in the  
27 mountains around it.

28 So, I think there is a conflict of interest



1 there. I don't think that there's too much closeness, and I  
2 don't think this represents what is best in labor, which  
3 recognizes that the environmentalists, not regressive  
4 industries, ought to be their allies.

5 Thank you.

6 MR. McKINNON: I believe in science, and I think  
7 watershed analysis is the way to do things in analyzing how we  
8 treat streams and forestry.

9 I don't think buffers are a scientific way to do  
10 that. You'd have varying geographies, geology, plant life,  
11 different covers, different types of streams, different types of  
12 fish, and blanket buffers just plain don't -- it's a  
13 one-size-fits-all.

14 And I guarantee you that if confirmed on the Air  
15 Board, I'm going to act the same way, consistently. It isn't --  
16 it isn't the right way to do things.

17 And certainly I do not own stock in a timber  
18 company. I do not benefit one way or another in terms of how  
19 this works out. Certainly, the Machinists Union may gain  
20 members, may lose members. I don't have a financial interest in  
21 this. I don't have an overriding philosophic interest in this.

22 I have a charge in my other life, and that's to  
23 defend the members that I represent, sir. And I do that as  
24 honestly and most straight-forward as I can do that.

25 When there's bad science from environmentalists,  
26 I'm going to say there's bad science. When there's bad science  
27 from the industry, I'm going to say there's bad science, to the  
28 extent I understand it.



CHAIRMAN BURTON: Any other witnesses in  
opposition?

Moved by Senator O'Connell, call the roll.

SENATOR KNIGHT: Just a short question.

What do you mean by a buffer zone?

MR. PACE: Buffer zones are on the streams in  
order to protect them.

The Northwest forests, the scientists from all  
over the west that put together the federal protections have  
buffer zones. Our whole -- any rules we have are blanket  
rules.

SENATOR KNIGHT: Is it in a restricted area?

MR. McKINNON: Senator, I shouldn't have passed  
it up.

It's a prescribed number of feet to protect the  
stream.

CHAIRMAN BURTON: You can't cut close to the  
water, because if you cut close to the water, stuff will get in  
and the fish will die.

MR. McKINNON: Right.

MR. PACE: But some people want to cut next to  
the stream.

CHAIRMAN BURTON: Call the roll.

SECRETARY WEBB: Senator Hughes.

SENATOR HUGHES: Aye.

SECRETARY WEBB: Hughes Aye. Senator Knight.

SENATOR KNIGHT: Aye.

SECRETARY WEBB: Knight Aye. Senator O'Connell.

1 SENATOR O'CONNELL: Aye.

2 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

3 SENATOR LEWIS: Aye.

4 SECRETARY WEBB: Lewis Aye. Senator Burton.

5 CHAIRMAN BURTON: Aye.

6 SECRETARY WEBB: Burton Aye. Five to zero.

7 CHAIRMAN BURTON: Congratulations.

8 MR. MCKINNON: Thank you.

9 CHAIRMAN BURTON: Next, Robert Pernell, who had  
10 the arrogance to assume that we were going to confirm him and  
11 sent out invitations to a celebration of his confirmation.

12 [Laughter.]

13 CHAIRMAN BURTON: Chuck Center said, I just  
14 figure we ought to stiff him, and see how many people go to the  
15 party anyway.

16 [Laughter.]

17 CHAIRMAN BURTON: Senator Peace.

18 SENATOR PEACE: Mr. Chairman and Members, only  
19 someone who was so confident of their confirmation that they had  
20 already planned their celebration would ask me to introduce  
21 them.

22 [Laughter.]

23 SENATOR PEACE: So, I'm here.

24 Let me just say that we all know Mr. Pernell very  
25 well. His service on the SMUD Board, on the Council for  
26 Environmental and Economic Balance, and his experience here in  
27 this building for the California State Council of Laborers is a  
28 consistent record of recognizing the critical need to connect

1 conservation and environmental protection with our energy  
2 future.

3 And in an environment in which we are moving into  
4 the brave new world that I know that the Chairman feels very  
5 enthusiastic about in competition in the electrical industry,  
6 his focus and history and experience in electrical vehicles and  
7 in pursuing demand-side management programs, and all of the  
8 other variety of things that are critical to truly making a  
9 market work in the benefit of the environment as well as  
10 consumers is critically important in this position, and I  
11 support his appointment enthusiastically.

12 CHAIRMAN BURTON: Well put.

13 Bob.

14 MR. PERNELL: First of all, thank you, Senator  
15 Peace.

16 Senator Burton, Members of the Committee, I'm  
17 proud to be here, and I will thank you for your consideration of  
18 my nomination.

19 I also want to thank the Governor for appointing  
20 me to the Energy Commission.

21 My career has spanned both ends of the energy  
22 spectrum. My first job as it relates to energy was helping  
23 build Rancho Seco. That might be a sore subject.

24 CHAIRMAN BURTON: You're forgiven.

25 [Laughter.]

26 SENATOR PEACE: It's the cleanest nuclear plant  
27 in the country.

28 [Laughter.]



1 CHAIRMAN BURTON: The Bodega power plant, they  
2 didn't build that.

3 [Laughter.]

4 MR. PERNELL: I worked as a concrete specialist  
5 for the Laborers Union at that time. About six years ago, I was  
6 elected to the SMUD Board, the Sacramento Municipal Utility  
7 District, where I served one term as President, two terms as  
8 Vice President.

9 And again now, I've been chosen by the Governor  
10 to serve on the California Energy Commission. And I certainly  
11 am knowledgeable and will do a good job at that Commission.

12 I am fortunate to be serving at the California  
13 Energy Commission during its 25th year of operation. This is  
14 our Silver Anniversary.

15 My goals for the Commission consist of building  
16 on the Commission's outstanding record of successes. In the  
17 last 25 years, the Energy Commission developed energy standards  
18 for new buildings and appliances that have already saved over  
19 1.4 billion in energy costs, and that amount is growing.

20 For the past ten years, I was the Director of  
21 Research and legislative advocate for the California State  
22 Council of Laborers. That experience is the bedrock of my  
23 relationship with you and the Legislature.

24 It is my commitment to work constructively with  
25 the Legislature, and to provide information and analysis needed  
26 for decision making on a timely basis.

27 I have policy goals in three or four different  
28 areas. One of them is school, energy efficiency in schools. To



1 extend the public good charge, because we think that it is of  
2 benefit to the state, it has been of benefit to the state, and a  
3 commitment for clean fuels. There was some conversation about  
4 diesel.

5           There is a commitment for clean fuels that we  
6 have, and we are working at the Energy Commission to come up  
7 with alternative fuels, also in the electric vehicle arena. And  
8 we have been successful in securing the largest roll-out of  
9 electric vehicles in the country, working with the Post Office  
10 and postal vehicles.

11           I would just end by saying, my main goal is to  
12 maintain California's status as a leader in critical energy  
13 issues. And I had about six pages, but I was told to cut it  
14 short, and I'm doing that.

15           I would also open it up for questions, Senator  
16 Burton.

17           CHAIRMAN BURTON: Are you here as the Chairman of  
18 the Commission or as a member?

19           MR. PERNELL: As a member of the Commission.

20           CHAIRMAN BURTON: Why did you keep bothering me  
21 for an appointment to talk to me?

22           MR. PERNELL: Why did I keep bothering you? It  
23 goes back to my --

24           CHAIRMAN BURTON: You're just being --

25           MR. PERNELL: -- legislative advocate experience.

26           [Laughter.]

27           CHAIRMAN BURTON: Like you were going to tell me  
28 something I didn't know.

1 Senator Lewis.

2 SENATOR LEWIS: Just one question.

3 I guess you've been appointed to fill the  
4 environmental protection slot.

5 MR. PERNELL: That is correct.

6 SENATOR LEWIS: What is it in your resume and  
7 your past experience that gives you any kind of technical  
8 experience to qualify in that position?

9 MR. PERNELL: Well, I've worked with the SMUD  
10 Board in terms of technical experience. In the environmental  
11 arena, I worked with John White. We've done a lot of  
12 environmental clean energy with photovoltaics.

13 As a member of the Laborers, and working with  
14 environmental organizations, and Friends of the River, so, I  
15 worked on those, within those organizations, to talk about  
16 pesticides going down the Sacramento River.

17 I'm also a fisherman, so I was concerned with  
18 that.

19 We have -- I have not an extensive environmental  
20 background, but I think it's enough to qualify me for the  
21 position.

22 SENATOR LEWIS: I'm going to vote for your  
23 confirmation, but I will say that in past years, if Governor  
24 Wilson had brought up someone with about the same amount of  
25 experience, I've sat on this Committee in years past when most  
26 people were turned down for lack of experience.

27 CHAIRMAN BURTON: Not when I was sitting.

28 SENATOR LEWIS: That was a different

1 administration.

2 MR. PERNELL: Senator, I appreciate your  
3 confidence in me.

4 CHAIRMAN BURTON: Senator Hughes.

5 SENATOR HUGHES: I'd like to move the nomination.

6 CHAIRMAN BURTON: Senator Knight.

7 SENATOR KNIGHT: No questions.

8 CHAIRMAN BURTON: Now, are we all invited?

9 I'll tell you something, with friends like  
10 Center -- do you have any family here, Bob?

11 MR. PERNELL: Yes, Senator. I have my wife and I  
12 think my daughter, because I heard my grandkid crying. She must  
13 be outside. And I have my mother and father, my brother-in-law,  
14 sister-in-law, and my sister.

15 CHAIRMAN BURTON: That's who was making the  
16 noise?

17 MR. PERNELL: That was my grandson, yes.  
18 Normally when we walk precincts, everybody goes. So, everybody  
19 came here.

20 CHAIRMAN BURTON: Witnesses in support.

21 MR. CENTER: Chuck Center.

22 We support Robert. It's our loss and the state's  
23 gain. We miss him at State Council, but the state benefits.

24 MS. SHORI: My name is Jan Shori. I'm the  
25 General Manager of the Sacramento Municipal Utility District.

26 I wanted to support Robert's confirmation.

27 Thank you.

28 MR. RANKIN: Tom Rankin, California Labor



1 Federation.

2 MR. MOLINA: Tom Molina, President of the Union  
3 Label, Sacramento, here in support of Robert Pernell.

4 MR. WINSTEAD: Joe Winstead, California State  
5 Pipe Trades Council, in support.

6 MR. BERNACCHI: Eddie Bernacchi on behalf of the  
7 National Electrical Contractors Association and the California  
8 Legislative Conference of the Plumbing, Heating and Piping  
9 Industry in strong support of Robert's confirmation.

10 MR. ALVAREZ: Manuel Alvarez with Southern  
11 California Edison. We support Mr. Pernell for the appointment  
12 of Energy Commissioner.

13 MR. CARTER: Art Carter, representing the State  
14 Association of Electrical Workers and the Sheetmetal Workers  
15 Union in support.

16 MR. CLINE: Bob Cline, representing the Electric  
17 and Gas Industries Association in support.

18 MS. EDSON: Karen Edson, representing the  
19 Independent Energy Producers Association. We're in support.

20 MR. PELOTE: Willie Pelote, representing the  
21 American Federation of State, County and Municipal Employees, in  
22 strong support.

23 MR. POSNER: Howard Posner, SMUD Board of  
24 Directors in support.

25 MR. BAKER: Steve Baker with Aaron Read and  
26 Associates, representing the California Association of  
27 Professional Scientists, in support.

28 MR. JONES: Craig Jones, small business owner,



1 community activist, in full support.

2 MS. DAVIS: Thank you. Linda Davis, SMUD Board  
3 Director, in support.

4 MR. MENDEL: Warren Mendel, Southern California  
5 Contractors Association. I'm delighted to endorse Bob.

6 MR. OWENS: I'm Howard Owens with the Congress  
7 of California Seniors in support.

8 MR. WHITE: John White with the Sierra Club and  
9 the Clean Power Campaign. We're in support.

10 MR. CREMINS: Tim Cremins at Operating Engineers  
11 in full support.

12 CHAIRMAN BURTON: Witnesses in opposition.

13 SENATOR HUGHES: Move it.

14 CHAIRMAN BURTON: Moved by Senator Hughes. Call  
15 the roll.

16 SENATOR PEACE: I have been assured,  
17 incidentally, that the celebration is handicapped accessible.

18 CHAIRMAN BURTON: Call the roll.

19 SECRETARY WEBB: Senator Hughes.

20 SENATOR HUGHES: Aye.

21 SECRETARY WEBB: Hughes Aye. Senator Knight.

22 SENATOR KNIGHT: Aye.

23 SECRETARY WEBB: Knight Aye. Senator O'Connell.  
24 Senator Lewis.

25 SENATOR LEWIS: Aye.

26 SECRETARY WEBB: Lewis Aye. Senator Burton.

27 CHAIRMAN BURTON: Aye.

28 SECRETARY WEBB: Burton Aye.

1 CHAIRMAN BURTON: Keep it open for Senator  
2 O'Connell.

3 Congratulations, Robert.

4 [Thereafter, SENATOR O'CONNELL  
5 added his Aye vote, making the  
6 final vote 5-0 for confirmation.]

7 [Thereupon this portion of the  
8 Senate Rules Committee hearing was  
9 terminated at approximately 2:55 P.M.]

10 --ooOoo--  
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 20<sup>th</sup> day of March, 2000.

  
EVELYN J. MIZAK  
Shorthand Reporter





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APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR JOE BACA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

SENATOR JACK O'CONNELL

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

LYNDA S. TERRY, Director  
Department of Aging

SENATOR JOHN VASCONCELLOS

JOHN KEHOE, Executive Director  
California Commission on Aging

BETTY PERRY  
Older Women's League

HOWARD OWENS  
National Council of Senior Citizens

PETE MARTINEAU  
Congress of California Seniors



1 JIM DRENNAN  
California Council, Alzheimer's Association

2  
3 LYDIA MISSAELIDES  
California Association for Adult Day Services

4 PATRICK LUBY  
5 AARP

6 RAUL GALINDO, Member  
Youthful Offender Parole Board

7  
8 ROBERT PRESLEY, Secretary  
Youth and Adult Corrections Agency

9  
10 GILBERT J. SANDOVAL, Member  
Youthful Offender Parole Board

11 JOHN DINEEN, Chief Executive Officer  
12 PORAC

13 AARON READ  
Representing Himself

14  
15 UTE WATSON, Member  
Youthful Offender Parole Board

16 DON NOVEY  
17 CCPOA

18 PAM DOUGLAS, Executive Director  
19 Corrections Institute of America

20 DEBORAH WILSON  
CCPOA/PAAC

21 SCOTT JOHNSON, President  
22 Parole Agents Association of California

23 MICHAEL STAPLETON, Vice President  
24 Parole Agents Association of California

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Governor's appointees today, in descending order or ascending order, Lynda Terry, Director, Department of Aging.

Do this before the Governor changes his mind.

[Laughter.]

SENATOR VASCONCELLOS: This one's so good, you want to do it right away before anything happens.

As Chair of the Senate Committee on Aging and Long Term Care, I've had three years of working in this field and leading our efforts to address the aging of California and the programs.

The Department is charged with the Older Americans Act and Older Californians Act, and many long term care programs in the communities. Governor Davis has appointed, to his credit, Lynda Terry to become the Director of that Department. She has her Bachelor's Degree in psychology, Master's in public administration, undergrad with gerontology concentration.

She's worked at aging services in various ways in Modesto, her home county. I won't detail those. I think your documents already show those.

Let me just say that I've gotten to know her over these past three months. She showed how smart she is by hiring away our consultant on Aging and Long Term Care to be her Deputy Director, which is a good sign about her own astuteness and acuity of judgment.



1 I believe that she will be a solid and brilliant  
2 leader in the effort to assure that the Department administers  
3 our programs and helps the aging people of California get their  
4 fair shake. I'm pleased to recommend Lynda Terry to the  
5 Committee for your consideration, ultimately for your approval.

6 CHAIRMAN BURTON: Go ahead.

7 MS. TERRY: Thank you very much, Senator  
8 Vasconcellos.

9 It's a real pleasure to be here to talk with you  
10 today and have you consider my appointment. I just wanted you  
11 to know a bit about me and answer any questions you have about  
12 the Department.

13 I have to tell you, I have huge plans for this  
14 small department. It's the smallest department within the  
15 Health and Human Services Agency, but I think it needs to have a  
16 high level of visibility. As you all know, the population is  
17 growing older, particularly the over 85 population. Right now,  
18 one in 77; in 40 years, that'll be one in 34. And 47 percent of  
19 those who are 85 and older right now have Alzheimer's disease.

20 With this growth, we need to find ways, better  
21 ways for people to stay where they want to be in the first  
22 place, which is at home, in their own communities. The  
23 Department of Aging is a very proactive department. It's  
24 focused on providing services that do keep people in their  
25 communities.

26 What one of my goals is within the Health and  
27 Human Services Agency, and through the new Long Term Care  
28 Council, is to bring those aging issues to the forefront, so

1 that we cross departmental lines, cross agency lines. We have  
2 been somewhat categorical in the way we provide programs, and  
3 our funding streams. And I have a large background and a long  
4 history in collaboration and coordination, I'd like to bring  
5 that to the Department, and raise the level of expectation for  
6 this Department under my leadership.

7 I have good staff. We're reaching out to new  
8 partners, Congress of California Seniors, Seniors Coalition,  
9 Older Womens League, AARP, many stakeholders, involving  
10 consumers more in policy decisions we make, and finding new  
11 partnerships by reaching out to our academic partners, which  
12 we've not done as well in the past as we should.

13 With that, if you have any questions of me, I'd  
14 be glad to answer those at this time.

15 CHAIRMAN BURTON: Is there anybody in that  
16 audience realizes I was the author of this bill in the 1970s,  
17 making it an independent Department of Aging? There you go.

18 MS. TERRY: Thank you very much.

19 CHAIRMAN BURTON: And we set it up that way so  
20 that, with all respect, Governor Reagan couldn't mess with it.

21 Just one question. I'm not going to ask you  
22 because if you answer, it you'll get in the middle of something.

23 We're kind of concerned about, or if you could  
24 tell me, if you do know, how the administration's long term care  
25 tax credit is working? That's not that \$500 tax credit; right?  
26 That's something else? Do you know what I'm talking about?

27 MS. TERRY: The long term care tax, the proposed  
28 tax credit? The proposed is a \$500, in the Governor's budget is

1 a proposed \$500 care giver tax credit, which could be used for  
2 everything from adult day health care, to home modification,  
3 basically giving care givers a break.

4 I've seen a lot of studies in other states how  
5 this has worked.

6 CHAIRMAN BURTON: I'd like to see them, because  
7 it has not rung a lot of bells with us. Some of us, anyway, see  
8 expanding Medi-Cal eligibility for seniors, and also do  
9 something more meaningful with the IHSS workers.

10 Senator Lewis.

11 SENATOR LEWIS: You kind of stole my question in  
12 a sense.

13 CHAIRMAN BURTON: Which one? About who was the  
14 author of the bill?

15 SENATOR LEWIS: No, about the \$500 credit.

16 With regard to the \$500 credit that Senator  
17 Burton talked about for long term care for the disabled or at  
18 home, apparently the Leg. Analyst has found fault with the  
19 Governor's proposal, and has just suggested that the  
20 Legislature, as an alternative, look to expanding Medi-Cal  
21 benefits.

22 What's your thought on that? Which approach is  
23 better and why?

24 MS. TERRY: I don't know that there's a better  
25 approach.

26 I guess my position is, I hear from a lot of care  
27 givers. They need financial assistance in whatever form it  
28 comes to them. And I think that that's the most important thing



1 in their minds.

2 SENATOR LEWIS: In the future, always say the  
3 Governor's approach is better.

4 [Laughter.]

5 CHAIRMAN BURTON: That's why we're confirming her  
6 quick.

7 [Laughter.]

8 CHAIRMAN BURTON: We don't want to trade off  
9 binding arb. or fire fighting.

10 [Laughter.]

11 CHAIRMAN BURTON: Senator Hughes.

12 SENATOR HUGHES: Back in '95, Senator Mello and  
13 Assemblyman Bates had two measures that had different models of  
14 integrating services.

15 Do you have at a local level, do you have an  
16 update on the progress of those pilot programs, or are they  
17 still in existence?

18 MS. TERRY: Are you talking about AB 2800?

19 SENATOR HUGHES: No, AB 1020 and SB 547 by Bates.

20 MS. TERRY: For the long term care integrated  
21 pilot projects, those projects have had slow progress. It's a  
22 complicated thing to try to find ways to meld the funding  
23 streams, particularly when you're talking about a combination of  
24 federal and state and local funding.

25 And I do understand that -- I know San Bernardino  
26 and Tulare Counties have worked on this for quite some time, San  
27 Francisco, I believe Santa Clara is looking, among others, but  
28 there has been -- it's a very slow process.



1           SENATOR HUGHES: So, we haven't really learned  
2 very much from those projects.

3           MS. TERRY: We've learned that it's a very  
4 difficult thing to do, although not impossible. I think we have  
5 some opportunities to look at what successes they've had in  
6 moving forward. You know, how we can combine that with new  
7 efforts to expand services, through the Governor's Aging with  
8 Dignity initiative, and through expansion of existing services.

9           So, I think we have to look at those as a whole,  
10 how we can move forward in a combination of progress in those  
11 areas.

12           But it has been very slow.

13           SENATOR HUGHES: But it has been helpful.

14           MS. TERRY: It's been very helpful.

15           SENATOR HUGHES: It's given you some sense of  
16 direction.

17           MS. TERRY: It's given a sense of direction, and  
18 it's given us new ways of when we look at funding sources, and  
19 we make cost comparisons, how can we get to comparing apples and  
20 apples, and not apples and oranges in the process. And I think  
21 that's been very helpful.

22           SENATOR HUGHES: Fine, thank you.

23           SENATOR LEWIS: Any additional questions?

24           Anyone in the audience wishing to testify in  
25 behalf of the nominee?

26           MR. KEHOE: I am John Kehoe, Executive Director  
27 of the California Commission on Aging.

28           I've had the pleasure of working with Lynda for

1 the last five years, long before she was a glimmer in the  
2 Governor's eye. She's done a lot for seniors, and I know that  
3 she will do an outstanding job in leading this Department.

4 I certainly applaud your favorable consideration  
5 of her nomination.

6 SENATOR LEWIS: Thank you. Next.

7 MS. PERRY: I'm Betty Perry with the Older  
8 Women's League of California.

9 I think it's wonderful to be able to recommend a  
10 Baby Boomer to head the Department of Aging. We older women  
11 really appreciate her good ideas. We've watched her work. We  
12 know she's well trained, and we believe she's going to bring the  
13 Department of Aging back to the days when our member, Janet  
14 Levy, was important in its original work.

15 SENATOR LEWIS: Thank you. Next.

16 MR. OWENS: I'm Howard Owens with the National  
17 Council of Senior Citizens.

18 Lynda has worked with our chapter down in the  
19 Modesto area for a number of years as the Director of the  
20 Department of Aging there, as well as with the Alzheimer's unit.  
21 And that group is directed by a fellow by the name of Wendell  
22 Kiezer, and Wendell thinks she's great, so we endorse her.

23 SENATOR LEWIS: Next.

24 MR. MARTINEAU: Pete Martineau with the Congress  
25 of California Seniors.

26 It's our pleasure to support Ms. Terry.

27 SENATOR LEWIS: Thank you. Next.

28 MR. DRENNAN: I'm Jim Drennan, a member of the

1 State Council of the California Alzheimer's Association.

2 Lynda was our first public policy director, and  
3 she worked with us for nearly two years and created the office  
4 from scratch.

5 And all I've got to say is that if her  
6 performance for the State of California is on the same level as  
7 was for us, the people of California are really, really well  
8 off.

9 Thank you.

10 SENATOR LEWIS: Thank you. Next.

11 MS. MISSAELIDES: Lydia Missaelides, California  
12 Association for Adult Day Services.

13 We're here to support Lynda Terry's nomination.  
14 Have worked with her for a number of years. And I can tell you  
15 already in the few months that she's been here, she's already  
16 made a huge impact, as she said, in working relationships with  
17 groups.

18 We support her nomination.

19 SENATOR LEWIS: Thank you.

20 MR. LUBY: I'm Pat Luby with AARP.

21 We'd like to echo all the comments that've gone  
22 before. We've had a very good relationship working with Lynda,  
23 and applaud the Governor's recommendation and hope you'll come  
24 through with the confirmation.

25 SENATOR LEWIS: Thank you.

26 Anyone in the audience wishing to testify in  
27 opposition or raise concerns?

28 SENATOR HUGHES: Move the nomination.



1 SENATOR LEWIS: We have a motion. Call the roll.

2 SECRETARY WEBB: Senator Hughes.

3 SENATOR HUGHES: Aye.

4 SECRETARY WEBB: Hughes Aye. Senator Knight.

5 Senator O'Connell. Senator Lewis.

6 SENATOR LEWIS: Aye.

7 SECRETARY WEBB: Lewis Aye. Senator Burton.

8 SENATOR LEWIS: We will place that matter on  
9 call.

10 MS. TERRY: Thank you very much.

11 SENATOR LEWIS: Thank you.

12 [Thereafter, SENATORS O'CONNELL,  
13 KNIGHT and BURTON added their Aye  
14 votes, making the final vote 5-0  
15 for confirmation.]

16 SENATOR LEWIS: Next is Mr. Raul Galindo,  
17 Youthful Offender Parole Board.

18 MR. GALINDO: I'm Raul Galindo, as you well know.  
19 I was appointed by the Governor in May of '99, after I retired  
20 from the Los Angeles Police Department after 31 years.

21 I had distinguished service for the City of Los  
22 Angeles and the Department, where I worked various assignments  
23 and ended my career as the Officer in Charge of the Sexually  
24 Exploited Child Unit that investigated child pornography and  
25 computer crimes against children.

26 I've been on board since May, again. The work  
27 has been challenging. I think I bring a lot of attributes to  
28 the position, and I would hope that I would be confirmed today.



1 SENATOR LEWIS: Thank you very much.

2 Senator Hughes, any questions?

3 SENATOR HUGHES: Yes.

4 Thank you very much for being here today.

5 The funding level allows, as I understand,  
6 severely mentally ill parolees to receive seven hours of  
7 counseling per case per year.

8 How is that going to help anybody, seven hours  
9 over a period of a year? Do you think that's sufficient?

10 MR. GALINDO: I think what would be most helpful  
11 is additional funding, of course, for the Youth Authority.

12 My position is that I don't really have a say  
13 into what comes in on the budget for those programs.

14 We recommend certain programs and counseling for  
15 minors on a need basis as recommended by staff.

16 SENATOR HUGHES: Now, when we get to talk about  
17 the addicted parolees, they're going to receive only five hours  
18 per case per year. That's even less.

19 And, you know, how do you really help somebody  
20 with giving them so little attention and so little direction?  
21 Are you going to ask the Governor to see that we put more money  
22 in a program like this, to give more direction.

23 Maybe the gentleman sitting next to you should  
24 answer that.

25 MR. PRESLEY: Mr. Chairman, Robert Presley,  
26 Secretary of the Agency.

27 This issue is a Youth Authority issue that you're  
28 bringing up. And this gentleman is a member of the Youthful

1 Offender Parole Board. They don't get into programming and  
2 funding. They recommend it, but the Youth Authority carries it  
3 out.

4 SENATOR HUGHES: So, you're the person to ask the  
5 question.

6 MR. PRESLEY: Yeah, and the answer to that is,  
7 it's all budgetary.

8 SENATOR HUGHES: Would you ask for more money in  
9 the budget? I'm saying, are your hands kind of strapped in  
10 terms of what you can do with so little resources?

11 MR. PRESLEY: We, of course, come before the  
12 budget committees supporting the Governor's budget. And we  
13 don't have much latitude beyond that.

14 Legislative committees can do what they want, as  
15 you know, as I recall.

16 SENATOR HUGHES: Will you be asking for anything  
17 else?

18 MR. PRESLEY: Not today.

19 SENATOR HUGHES: Okay.

20 MR. PRESLEY: Later maybe.

21 SENATOR LEWIS: There was an L.A. Times article  
22 back in December of '99 that said because of the time add policy  
23 that you have, that youthful offenders spend more time  
24 incarcerated on virtually every other crime, with the exception  
25 of murder, than adults.

26 Do you concur with that? Why is that the case?

27 MR. GALINDO: I don't understand the question

28 SENATOR LEWIS: The question was that the L.A.

1 Times ran an article back in December of 1999. They did a study  
2 comparing the length of incarceration for youthful offenders  
3 versus people in the adult population. They made a  
4 determination that, with the exception of murder, that longer  
5 sentences were meted out for youthful offenders.

6 MR. GALINDO: When a ward comes to us on the  
7 initial hearing, the time is all ready set by a judge.

8 We then look at the category of the crime and  
9 give him a sentence for him or her. And then staff recommends  
10 programs. And if we concur or see additional needs, we  
11 recommend those programs, and that determines the amount of time  
12 that the ward will complete.

13 Depending on a time cut, or a time added to  
14 either complete that program, or because he is programming,  
15 there is a time cut, that's what determines his parole  
16 consideration hearing.

17 But the time is all ready set.

18 SENATOR LEWIS: Do you think on balance that the  
19 time sets are appropriate?

20 MR. GALINDO: That has been done all ready by the  
21 Legislature, and that's what I work with.

22 MR. PRESLEY: Senator, I think the variation is  
23 dependent on the conduct of the ward. If they're carrying on,  
24 you know, doing things that they shouldn't, attacking staff,  
25 won't program, things like that, then many times staff will  
26 recommend to the Board, say, an additional 60 days, or  
27 something, because of that.

28 Then, if they're doing quite well, they'll come



1 in and recommend an additional 60 day cut. So, it all sort of,  
2 in the end, balances out, but it's reflective of their conduct.

3 SENATOR LEWIS: Have you seen the study?

4 MR. PRESLEY: I don't know. I'm not familiar  
5 with that.

6 SENATOR LEWIS: It just strikes me as odd.  
7 Perhaps that means that in the adult system for some of those  
8 crimes, the length of incarceration is not long enough.

9 Any other questions, Members of the  
10 Committee?

11 Anyone in the audience wishing to testify on  
12 behalf of the nominee?

13 Do you have family here?

14 MR. GALINDO: They're in law enforcement, and  
15 they could not get away to come up here.

16 SENATOR LEWIS: Anyone in the audience who wishes  
17 to testify on behalf of the nominee? Anyone wishing to testify  
18 in opposition or raise concerns?

19 SENATOR KNIGHT: Move it.

20 SENATOR LEWIS: We have a motion. Please call  
21 the roll.

22 SECRETARY WEBB: Senator Hughes.

23 SENATOR HUGHES: Aye.

24 SECRETARY WEBB: Hughes Aye. Senator Knight.

25 SENATOR KNIGHT: Aye.

26 SECRETARY WEBB: Knight Aye. Senator O'Connell.  
27 Senator Lewis.

28 SENATOR LEWIS: Aye.



1 SECRETARY WEBB: Lewis Aye. Senator Burton.

2 SENATOR LEWIS: We'll place this on call to  
3 allow the other Members to add on as well.

4 MR. GALINDO: Thank you very much.

5 [Thereafter, SENATORS O'CONNELL  
6 and BURTON added their Aye votes,  
7 making the final vote 5-0 for  
8 confirmation.]

9 SENATOR LEWIS: Mr. Gilbert Sandoval.

10 MR. PRESLEY: Mr. Chairman, I think you have  
11 these three. They're all Youthful Offender Parole Board  
12 Members, and they all do relatively the same thing.

13 SENATOR KNIGHT: You support them all.

14 MR. PRESLEY: I support all three of them.

15 MR. SANDOVAL: Good afternoon, Mr. Chair and  
16 Members of the Committee.

17 My name is Gilbert J. Sandoval. I was appointed  
18 as a Member of the Youthful Offender Parole Board last year.  
19 I've served approximately nine months. I've been recently  
20 reappointed to this committee.

21 I'd like to tell you a little bit about myself  
22 prior to the appointment by the Governor.

23 I served over 23 years as a public safety  
24 officer. I was a police officer in Los Angeles for the Los  
25 Angeles School District Police Department. I attended and  
26 graduated from the Los Angeles County Sheriff's Academy in 1998.

27 In my career as a police officer for the School  
28 District police, I served in a variety of assignments: as a

1 campus police officer; as a patrol officer; a specialized gang  
2 unit officer; community relations; and a training officer.

3 I later promoted to the rank of detective, and I  
4 was assigned to the Criminal Investigative Units, and I retired  
5 prior to my opportunity to come to state service as a senior  
6 detective in Internal Affairs.

7 In my career as a police officer, I completed  
8 many specialized and professional development courses, focusing  
9 on juvenile justice and juvenile delinquency issues. I  
10 completed those courses in child abuse, sexually exploited  
11 children, youth violence, and street gang issues.

12 I was selected and appointed to the POST  
13 Commission on the specialized POST Advisory Committee. I served  
14 the POST Commission, acting as a special consultant on  
15 specialized school police issues, school violence issues, and  
16 safe school issues.

17 I was awarded certificates from the POST  
18 Commission: a basic certificate; intermediate certificate, and  
19 the advanced certificate.

20 I also attended and completed the course of study  
21 at USC at the School of Public Administration, the Delinquency  
22 Control Institute, which again focuses on delinquency and youth  
23 violence issues.

24 I believe that my professional experience, my  
25 background, I think that specifically focusing on juvenile  
26 justice issues and youth at risk, I believe that this has  
27 prepared me for my role as a Board Member to the Youthful  
28 Offender Parole Board.

1                   So, I would appreciate your consideration for my  
2 confirmation.

3                   Thank you.

4                   SENATOR LEWIS: Thank you.

5                   Any questions from Members of the Committee?

6                   SENATOR HUGHES: I'd like to say a public thank  
7 you for all the help that you gave me on my school safety  
8 legislation, and certainly showed the experience that you had  
9 being a school policeman.

10                  MR. SANDOVAL: Thank you, Senator Hughes.

11                  SENATOR HUGHES: Thank you very much for that.

12                  Along the same lines as your predecessor, I was  
13 wondering, if the Governor said, we have a little extra money  
14 we'd like to throw your way, what additional funding, if it was  
15 provided for treatment, where do you think there would be the  
16 greatest need?

17                  MR. SANDOVAL: Senator Hughes, you know my  
18 background, and you know of my concerns with youth at risk.

19                  And I certainly, in a perfect world, I think that  
20 we'll we never have enough programs for youth.

21                  But I think that definitely in the mental health  
22 arena, I definitely think that we need to continuously look at  
23 enhancing those programs. And obviously, your statement, never  
24 is enough is enough.

25                  But the amounts, now I would definitely support  
26 and I would definitely be an advocate for more resources in the  
27 mental health arena of the California Youth Authority.

28                  SENATOR HUGHES: All right. Thank you.



1                   SENATOR LEWIS: Anyone in the audience wishing to  
2 testify on behalf of the nominee?

3                   MR. DINEEN: Mr. Chairman, Members of the  
4 Committee, my name is John Dineen. I am the Chief  
5 Administrative Officer of the Peace Officers Research  
6 Association of California, which represents 45,000 peace  
7 officers in California.

8                   And we strongly support the appointment of  
9 Mr. Sandoval to this position.

10                  SENATOR LEWIS: Thank you.

11                  Anyone else?

12                  MR. READ: Mr. Chairman and Members, Aaron Read.  
13 And believe it or not, PORAC's been represented ably by their  
14 Chief Administrative Officer.

15                  But I want to tell you that in my 31 years of  
16 being around government, I've rarely seen a public servant so  
17 dedicated as Sandy Sandoval. And I can't tell you how impressed  
18 I've been in having him as a friend and a mentor. And you  
19 couldn't find a better person to serve.

20                  Thank you.

21                  SENATOR LEWIS: Thank you.

22                  Anyone in the audience wishing to give testimony  
23 in opposition or raise concerns.

24                  SENATOR HUGHES: Move the nomination.

25                  SENATOR LEWIS: We have a motion. Please call  
26 the roll.

27                  SECRETARY WEBB: Senator Hughes.

28                  SENATOR HUGHES: Aye.



1 SECRETARY WEBB: Hughes Aye. Senator Knight.

2 SENATOR KNIGHT: Aye.

3 SECRETARY WEBB: Knight Aye. Senator O'Connell.

4 Senator Lewis.

5 SENATOR LEWIS: Aye.

6 SECRETARY WEBB: Lewis Aye. Senator Burton.

7 SENATOR LEWIS: We will place this matter on

8 call as well.

9 [Thereafter, SENATORS O'CONNELL

10 and BURTON added their Aye

11 votes, making the final vote

12 5-0 for confirmation.]

13 SENATOR LEWIS: Next, Ute Watson.

14 MS. WATSON: I'll accept any pronounciation. It's  
15 a little bit unusual.

16 MR. PRESLEY: She is probably the best of the  
17 three.

18 [Laughter.]

19 MS. WATSON: Good afternoon, Mr. Chairman and  
20 Senators.

21 I'm very happy to be here. As my two colleagues  
22 previously before me stated, I also was appointed in May, past  
23 year, so I have all of ten months of experience.

24 I started with the Department of Corrections.  
25 I'm a correctional peace officer, beginning as an officer, and a  
26 correctional counselor. And prior to this appointment, I  
27 worked -- I served as a parole agent in the field, and as an  
28 assistant unit supervisor.

1 I was also very active in the union, CCPOA.  
2 Served on several boards within the institutions and with the  
3 parole agents.

4 I feel the combination of experience of working  
5 inside a correctional facility, in addition to having a number  
6 of years with the parole division, working in the community, and  
7 keeping in mind the safety of the public, I feel this qualifies  
8 me. It certainly assists me in the decision making for the  
9 past ten months. It would qualify me for this position on the  
10 Youthful Offender Parole Board.

11 I'm also here to answer any questions, if you  
12 have them. I'm very happy that Mr. Presley is here.

13 But some of the budget information, some of those  
14 things, the technical things, are just a little bit new to me  
15 still.

16 So, I'm available to any questions you have.  
17 Thank you.

18 SENATOR LEWIS: Questions?

19 Anyone in the audience wishing to testify?

20 MR. NOVEY: Good afternoon, Chairman Lewis,  
21 Committee Members.

22 My name is Don Novey, representing California  
23 Correctional Peace Officers Association, representing 28,000 men  
24 and women in the State of California that work the toughest beat  
25 in the state.

26 There's been good candidates for the Youthful  
27 Offenders Parole Board selected, hopefully, today.

28 Ms. Watson I've known for over 20 years. She has

1 more experience than most people I've ever met in dealing with  
2 the criminal element, most of which are in prison or Youth  
3 Authority.

4 I think the nicest thing I can say about this  
5 lady is, in her own native tongue, that she's a genetti gedama;  
6 in other words, she's a very wonderful person.

7 I wish her well, and I hope you, through your  
8 process here, move her on to the Senate Floor.

9 Thank you.

10 SENATOR HUGHES: Mr. Novey, what would you do to  
11 someone who tried to steal your hat?

12 That's quite all right. You don't need to  
13 answer.

14 MR. NOVEY: I would probably call somebody from  
15 the AARP.

16 [Laughter.]

17 MS. DOUGLAS: My name is Pam Douglas, and I  
18 represent the Corrections Institute of America, as Executive  
19 Director.

20 I've known Ms. Watson, worked beside her for over  
21 two Decades, and can certainly attest to her character.

22 Thank you.

23 MS. WILSON: I'm Debbie Wilson, Parole Agent II  
24 Specialist, and a member of CCPOA, who works the toughest beat  
25 in the state.

26 And I've had the pleasure to work with Uta, and  
27 she is your best choice, and I hope that you guys all give her  
28 an Aye.

1 CHAIRMAN BURTON: Do you work it or walk it?  
2 Novey says you walk the toughest beat.

3 MS. WILSON: We work it and walk it.

4 CHAIRMAN BURTON: He walks it.

5 MR. JOHNSON: Scott Johnson, President of the  
6 Parole Agents Association of California.

7 I've known all Uta for many, many years, and  
8 she's a fine candidate to be on the Youthful Offender Parole  
9 Board.

10 MR. STAPLETON: Michael Stapleton, Vice  
11 President of the Parole Agents Association of California, which  
12 represents 1600 parole agents, supports the appointment of Uta  
13 Watson.

14 CHAIRMAN BURTON: Any opposition?

15 SENATOR HUGHES: Move it.

16 CHAIRMAN BURTON: Took care of the family  
17 obligations, moved by Senator Hughes. Call the roll, please.

18 SECRETARY WEBB: Senator Hughes.

19 SENATOR HUGHES: Aye.

20 SECRETARY WEBB: Hughes Aye. Senator Knight.

21 SENATOR KNIGHT: Aye.

22 SECRETARY WEBB: Knight Aye. Senator O'Connell.  
23 Senator Lewis.

24 SENATOR LEWIS: Aye.

25 SECRETARY WEBB: Lewis Aye. Senator Burton.

26 CHAIRMAN BURTON: Aye.

27 Thank you. Congratulations.

28 We'll hold the roll open.



1 MS. WATSON: Thank you, everyone.

2 [Thereafter, SENATOR O'CONNELL

3 added his Aye vote, making the

4 final vote 5-0 for confirmation.]

5 [Thereupon this portion of the

6 Senate Rules Committee hearing was

7 terminated at approximately 4:46 P.M.]

8 --ooOoo--


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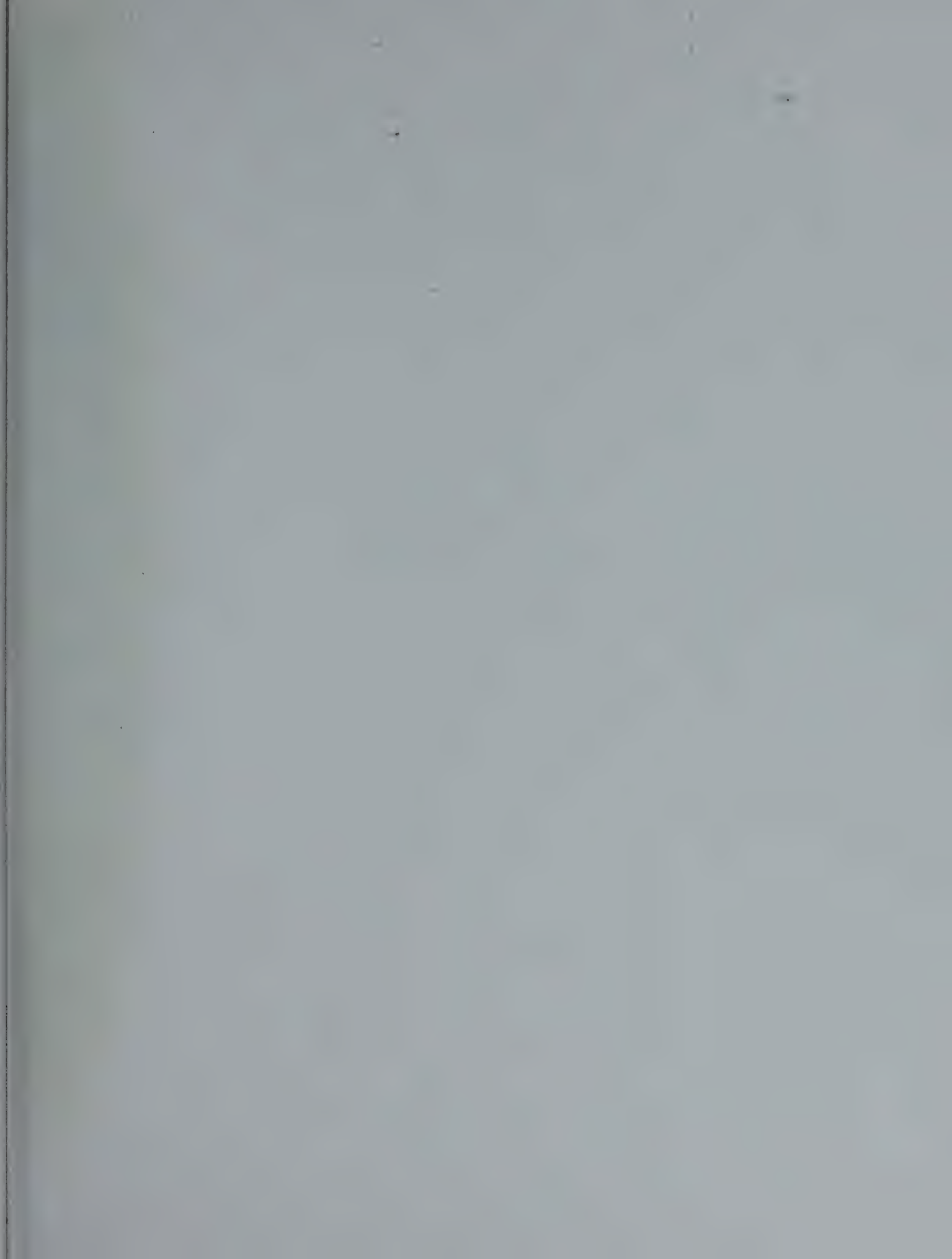
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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 MONDAY, APRIL 3, 2000

16 1:35 P.M.

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25 Reported by:

26  
27 Evelyn J. Mizak  
28 Shorthand Reporter





APPEARANCES

MEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR JOE BACA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

SENATOR JACK O'CONNELL

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

DOUGLAS H. BOSCO, Member  
Industrial Welfare Commission

LYMAN HUNGERFORD  
International Association of Machinists Union

BARRY BROAD, Member  
Industrial Welfare Commission

HOWARD OWENS  
Consumer Federation  
Congress of California Seniors

TOM RANKIN  
California Labor Federation

1 BILL CAMP  
2 Sacramento Central Labor Council

3 MATT McKINNON  
4 Machinists Union

5 SENATOR PATRICK JOHNSTON

6 GERALD O'HARA  
7 California Teamsters

8 RICHARD HOLOBER  
9 California Nurses Association

10 JAMES (J.P.) JONES  
11 United Transportation Union

12 LESLEE COLEMAN, Member  
13 Industrial Welfare Commission

14 SENATOR JOHN VASCONCELLOS

15 WILLIAM DOMBROWSKI, Member  
16 Industrial Welfare Commission

17 BRUCE YOUNG  
18 California Retailers Association

19 RICHARD P. GANNON, Administrative Director  
20 Division of Workers' Compensation

21 MARK MARCUS  
22 California Applicants Attorneys Association

23 CARLYLE BRAKENSIEK  
24 California Society of Industrial Medicine and Surgery

25 ROBERT BURTON, Member  
26 Workers Compensation Appeals Board

27 LINDA MOULTON-PATTERSON, Member  
28 California Integrated Waste Management Board

SENATOR WES CHESBRO

SENATOR JOSEPH DUNN

1  
2 YVONNE HUNTER  
3 League of California Cities

4 MARK THEISEN  
5 Norcal Waste Systems, Inc.  
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Douglas Bosco. Doug, sorry, I didn't see you. Come up.

MR. BOSCO: Do you want me to give a speech?

CHAIRMAN BURTON: Well, you might want to say something.

MR. BOSCO: Well, first of all, it's a great privilege to be here, returning to the Legislature in a different capacity. I would, of course, defer to your committee in seeking confirmation of my nomination to the Industrial Welfare Commission.

CHAIRMAN BURTON: Have you read AB 60, the Knox bill?

MR. BOSCO: Yes, I have, Senator Burton.

CHAIRMAN BURTON: Friday, the Commission referred an issue to the Wage Board that, as I read the bill, is not authorized in the legislation. It was the issue basically of, I guess, for the want of a better word, computer software people, or whatever, who, as I understand their jobs, sometime are called on to work 12, 14 hours straight. And they're very high paid workers, and probably are not the ones that should be covered under the bill.

But that, in my judgment, would be an issue for legislation as opposed to a Wage Board.

Can you tell me what the thoughts were of the Commission when they did that?

MR. BOSCO: Senator, the counsel to the



1 Commission informed us that the question that we were addressing  
2 in that particular Wage Board charge was whether highly paid  
3 computer specialists could be granted an exemption under the  
4 law, and more specifically, under AB 60.

5 And our counsel advised us that that was within  
6 the jurisdiction of the committee.

7 CHAIRMAN BURTON: Is the counsel here?

8 MR. BOSCO: We didn't make, of course, any  
9 decision on the merits of it. We did send it out to a Wage  
10 Board, which is comprised equally of employers and labor  
11 people. And at some point, they'll make a recommendation to the  
12 Commission.

13 I don't think sending it out on a Wage Board in  
14 any way indicates what the Commission's opinion is on that  
15 subject.

16 CHAIRMAN BURTON: No, but I think what it  
17 indicates is that they don't understand the law.

18 I understand you following your counsel, and I  
19 guess we'll get Senator Solis to bring who ever the counsel is  
20 into her committee to figure out, is this the same person who  
21 thought they could do the stock opposition deal by wage order?

22 You've got a counsel, I think, that doesn't know  
23 what the hell he or she's talking about and gives you bum  
24 advice.

25 And I do not blame you guys for following the  
26 counsel's advice.

27 MR. BOSCO: Also, I'm not sure that our counsel  
28 has issued any decision on the other matter that you just

1 referred to, which has to do with stock options and other forms  
2 of compensation.

3 But I do know in this particular instance, we did  
4 ask if it was within jurisdiction of the Commission to at least  
5 empanel the Wage Board.

6 CHAIRMAN BURTON: I have to go through the  
7 problem like I did in the other, get a Leg. Counsel's opinion,  
8 get an AG's opinion, which we had to get on the other issue in  
9 order to do something. And, you know, I am going to talk to  
10 Senator Solis to see that she brings that counsel in either by  
11 subpoena or otherwise and see whether he or she has their head  
12 in a place where it probably shouldn't be.

13 MR. BOSCO: I will say, if I could, that my  
14 experience on this Commission has been very brief.

15 However, it does deal with extraordinarily  
16 contentious issues. The meetings we've had have been heavily  
17 attended, very vociferously fought out issues, and oftentimes  
18 these issues do hinge, or at least are heavily impacted by legal  
19 opinions.

20 But I have more legal opinions coming in on our  
21 fax in my law office on the work of this Commission than I ever  
22 have on my own clients' work. And each one are heavily briefed  
23 items.

24 CHAIRMAN BURTON: I think governments are more  
25 guided by, starting with the U.S. Supreme Court, and down to the  
26 Leg. Counsel, but up the AG, and not some private counsel who is  
27 either being paid by this group or paid by that group.

.28 But clearly, and you kind of sit there, by and

1 large, as the guy as Mr. Swing Vote, by and large, on some of  
2 this stuff.

3 But to me, the issue isn't whether these people  
4 should be exempt or not exempt. The issue is whether it should  
5 be done legislatively, which I actually would be supportive of,  
6 because I think people making 75 bucks an hour are not the ones  
7 that we're worried about being abused necessarily by their  
8 employers.

9 So, it's more of an issue of what is proper, as  
10 opposed to what is philosophically the right side of it. That's  
11 my point.

12 Clearly, and I know that there was the issue that  
13 Commissioner Dombrowski brought up, of what is management, and  
14 what isn't. And what's hands on and heads on. And that is  
15 something that clearly was contemplated and authorized for the  
16 Commission to deal with.

17 The only thing I recall them being authorized to  
18 deal with was that issue, plus a report back on, like,  
19 especially down in Silicon Valley, the so-called 4-10 or flex  
20 time issue. So, it's not like to the merits of it, but to the  
21 process.

22 Senator Lewis.

23 SENATOR LEWIS: Recently, or up until recently,  
24 there was an exemption from the overtime law for certain  
25 computer professionals, which most recent legislation did not  
26 carry forward that exemption.

27 What is your thought about whether or not that  
28 exemption should be granted? I understand that Assemblyman



1 Honda has introduced legislation to do that again.

2 MR. BOSCO: I think that may be the same issue  
3 that Senator Burton was raising.

4 I think the problem is, as often happens, is that  
5 the federal law does exempt these various people, and the state  
6 law now doesn't. And they are seeking an exemption with some  
7 evidence that, as you usually hear in these kind of debates,  
8 that our state would be unfairly prejudiced by these people  
9 moving elsewhere, being able to do their work on line rather  
10 than living in California, such things as this.

11 They do tend to be highly paid people, however.  
12 So, the typical minimum wage issue isn't involved.

13 As I say, I don't think anyone on the  
14 Commission -- well, I'll speak for myself.

15 We put it out for a Wage Board. We had two  
16 hearings at which this subject came up.

17 I will say, of all the different issues, I don't  
18 think this was the most hotly contested one, either by labor or  
19 management.

20 And we did decide to put it out for a Wage Board,  
21 where equal sides will be able to hear testimony throughout the  
22 state, and then come back to us with a recommendation.

23 But I think the ultimate issue is, is it wise for  
24 California to conform with federal law, or maybe not.

25 CHAIRMAN BURTON: No, the ultimate issue is, does  
26 the Commission have to obey the state law or not. And if we're  
27 going to change it, and I think it makes sense to change it, it  
28 has to be done legislatively.



1           Also, as I understand what these guys do, it  
2 would be very tough for them to do it on line with some of the  
3 problems, hands on with the computer. So, that's kind of a  
4 bogus thing from the industry's standpoint, because it's pretty  
5 tough to fix a car on line, or a computer.

6           MR. BOSCO: Well, Senator, no one would have  
7 greater respect for the Legislature than I would. I think any  
8 time that the Legislature speaks on this subject or any other,  
9 that gives us our marching orders.

10           And certainly, if any bill were in progress, or  
11 had passed that spoke directly to this, there would be no  
12 question about the decision our Commission could make.

13           SENATOR LEWIS: You said that that was one of the  
14 least contentious issues that have been brought before you?

15           MR. BOSCO: Well, I thought so, but there's been  
16 a lot of contentious issues.

17           SENATOR LEWIS: What else is perculating right  
18 now?

19           MR. BOSCO: Well, one issue that we have is, how  
20 a management position would be determined, and what the criteria  
21 is. For instance, is someone that works at Burger King as an  
22 assistant manager, should that person be exempt from overtime  
23 pay simply because of the title on his or her pocket? And  
24 various standards involved with that. That's very contentious,  
25 how management is defined.

26           As Senator Burton pointed out, the legislation  
27 doesn't specifically point to that.

28           Another question is whether, especially in the

1 high tech industry, whether employees can be compensated by  
2 stock options and other bonuses in place of or in addition to  
3 overtime pay.

4 Another issue is the question of -- gosh, there's  
5 just about everything. You know, we have pool plasterers that  
6 can't finish all of their work in an eight-hour day. So, should  
7 their employers have to pay overtime?

8 We have nurses in hospitals that work greater  
9 periods of time. We have people that want to work ten-hour days  
10 for four days and take one day off.

11 I've never really seen a more contentious  
12 commission.

13 And to be honest with you, I'm honored to be  
14 appointed to this, but I did not apply for this position. In  
15 fact, in retrospect, I think you'd have to be crazy to apply for  
16 it.

17 [Laughter.]

18 MR. BOSCO: But those types of issues.

19 SENATOR LEWIS: Just the last question.

20 What effect are you witnessing right now because  
21 of the tight labor market in California on the traditional jobs  
22 that used to pay minimum wage, whether or not they still are.

23 It seems like every time I go to one of my  
24 favorite fast food places, you see help wanted signs, and  
25 they're all offering starting pay above the minimum wage.

26 MR. BOSCO: I think that's very true.

27 And that raises another matter, and that is, this  
28 Commission sets the minimum wage for the state. And that issue

1 also has come up and is liable to be contentious.

2 Our minimum wage now is \$5.75 an hour, and we  
3 just began the process of a Wage Board to consider whether that  
4 should be raised.

5 But certainly a prosperous economy as we now have  
6 drives everyone's hopes and ambitions for the future higher, and  
7 that includes low paid people.

8 SENATOR LEWIS: Do you pay any heed to Chairman  
9 Greenspan's concern that significantly raising the minimum wage  
10 could be inflationary?

11 MR. BOSCO: Well, you know, I pay heed to that as  
12 well as a number of other things. I mean, as a life-long  
13 Californian, I've seen where we've gone through cycles, you  
14 know, of recession and good times.

15 CHAIRMAN BURTON: Senator Hughes, the voice of  
16 reason.

17 SENATOR HUGHES: Thank you.

18 I was thinking about this minimum wage issue.

19 If we had kept up right now with inflation, we  
20 would be at seven dollars an hour.

21 Would that be a ridiculous amount? Because the  
22 cost of living, especially the cost of living is so high in our  
23 state. And as someone who was previously at the federal level,  
24 how do you look at it.

25 MR. BOSCO: I can't comment on what amount would  
26 be best, but we did have a young boy testify at the last hearing  
27 that we had who pointed out that his mother was raising six  
28 children, including himself. And she worked at minimum wage.



1 And he pointed out how even the slightest difference in that  
2 wage could make a huge difference in their family.

3 And I afterwards, I asked him to come up and  
4 talked briefly with him, and Commissioner Broad and I both asked  
5 if he'd like to be on our Wage Board. Because it occurred to me  
6 that the minimum wage isn't just the issues of the people that  
7 are earning their livings now, but it's these type of kids, you  
8 know. That will affect whether he gets a good education, the  
9 type of home he grows up in, the type of aspirations he develops  
10 for the future.

11 And I think when we consider minimum wage, it's  
12 really a much broader issue such as that.

13 So, I think we are going to put him on the Wage  
14 Board, and that Wage Board, again, will have hearings throughout  
15 the state, and then come back to us with its recommendation.  
16 And at that point, we'll decide on the minimum wage.

17 SENATOR HUGHES: What's your time line on these  
18 hearings, because in the mean time, people are starving.  
19 They're desperate.

20 MR. BOSCO: I was thinking about that. I read an  
21 article in the Los Angeles Times that said that we're unlikely  
22 to make a decision in a year. And I thought, that sounds  
23 awfully strange. I can't imagine why it would take that  
24 long.

25 SENATOR HUGHES: Well, they don't know anything  
26 but what you do. So, what is your determination? How are you  
27 going to, as a leader of this Commission, direct the Commission  
28 to try to resolve this in a timely manner?



1 MR. BOSCO: I would think that the Wage Boards  
2 could conclude their work in three or four months.

3 We cannot -- the Industrial Welfare Commission  
4 can't make a decision until Wage Boards have met, but I would  
5 think they could meet in three or four months and make their  
6 recommendations.

7 SENATOR HUGHES: Are you just telling us this, or  
8 are you going to tell them that?

9 What I'm asking is, are you going to try to give  
10 them any fuel to get ahead with their job, or are you just going  
11 to sit back and wait until they come up with something? Do you  
12 feel urgency?

13 MR. BOSCO: I do feel an urgency. I think  
14 especially at a time when everyone else is experiencing  
15 prosperity, that we shouldn't sit on our hands to extend it to  
16 probably the least fortunate people.

17 SENATOR HUGHES: Thank you.

18 CHAIRMAN BURTON: Senator Knight.

19 SENATOR KNIGHT: No, I'd lose my environmentalist  
20 status.

21 [Laughter.]

22 MR. BOSCO: I could go on the Board of Forestry.  
23 That might be a little less contentious.

24 SENATOR HUGHES: Move.

25 CHAIRMAN BURTON: Move by Senator Hughes.

26 Did you come here solo? Got any friends, family,  
27 anybody?

28 MR. BOSCO: I wasn't sure whether this is

1 something I would have wanted to bring my family to.

2 [Laughter.]

3 MR. BOSCO: Could I go get them now?

4 CHAIRMAN BURTON: Anybody in support? Anybody in  
5 opposition?

6 Hearing none, call the roll.

7 SECRETARY WEBB: Senator Hughes.

8 SENATOR HUGHES: Aye.

9 SECRETARY WEBB: Hughes Aye. Senator Knight.

10 SENATOR KNIGHT: Aye.

11 SECRETARY WEBB: Knight Aye. Senator O'Connell.

12 SENATOR O'CONNELL: Aye.

13 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

14 SENATOR LEWIS: Aye.

15 SECRETARY WEBB: Lewis Aye. Senator Burton.

16 CHAIRMAN BURTON: Aye.

17 SECRETARY WEBB: Burton Aye. Five to zero.

18 CHAIRMAN BURTON: Thanks.

19 MR. BOSCO: Thank you very much.

20 CHAIRMAN BURTON: Are you the Chair of the  
21 Commission.

22 MR. BOSCO: Fortunately I'm not, Mr. Chairman.

23 CHAIRMAN BURTON: Who is?

24 MR. BOSCO: Mr. Dombrowski, who will be coming  
25 up. I'm sorry, Bill.

26 CHAIRMAN BURTON: Barry Broad.

27 Did you want to say something, sir.

28 FROM THE AUDIENCE: Yes, Senator.

1 CHAIRMAN BURTON: Well, I asked if there was any  
2 opposition or support.

3 FROM THE AUDIENCE: You went through it so fast,  
4 that I couldn't respond that quick, sir.

5 I'm Lyman Hungerford, from the International;  
6 Association of Machinists.

7 CHAIRMAN BURTON: Have a seat.

8 MR. HUNGERFORD: Thank you, sir.

9 District 725 in the International Association of  
10 Machinists, I said that again. I'm a little dumbfounded here.

11 We're in support of his nomination and support on  
12 that, sir.

13 CHAIRMAN BURTON: Thank you.

14 MR. HUNGERFORD: We have quite a few behind us.  
15 I appreciate your --

16 CHAIRMAN BURTON: All of them working in the  
17 timber industry.

18 MR. HUNGERFORD: No, sir. The Machinists Union  
19 covers everybody.

20 CHAIRMAN BURTON: I know what the Machinists  
21 Union is. The timber guys like them.

22 MR. HUNGERFORD: Well, we like the timber  
23 organization as well, sir, and we support them one hundred  
24 percent.

25 I appreciate your indulgence, and thank you very  
26 much, ladies and gentlemen.

27 CHAIRMAN BURTON: Thank you.

28 Barry Broad.



1                   MR. BROAD: Senator, I just have a very brief  
2 statement.

3                   This appointment means something very special to  
4 me. I basically spent my entire adult life representing working  
5 people before this Legislature and at the Industrial Welfare  
6 Commission. I've participated in its Wage Boards over the last  
7 15 years. And I understand and appreciate how important the  
8 responsibility is.

9                   The IWC is not only the place in California where  
10 labor law policy is debated and distilled, but I understand that  
11 the job of the Industrial Welfare Commission is to ensure that  
12 the millions of Californians who go to work everyday to make our  
13 society function, who struggle to make ends meet, the people  
14 that ultimately create every dollar of wealth that exists in our  
15 society, need to be treated fairly and honestly by their  
16 employers.

17                   And that the job of the IWC is to ensure that  
18 employers are not subjected to competition using the labor  
19 market that puts them out of business because they're decent  
20 employers.

21                   It's a very serious responsibility. I pledge to  
22 work very hard on this Commission. I think I've worked pretty  
23 hard already, and that I will always do what my conscience tells  
24 me is right by California's working people.

25                   Thank you.

26                   CHAIRMAN BURTON: All right, you send something  
27 to the Wage Board, and what happens?

28                   MR. BROAD: You send it to the Wage Board. The



1 Wage Board's composed of an equal number of employer  
2 representatives and labor representatives with a neutral  
3 chairperson. They debate the issue.

4 Only once in my experience has the Wage Board  
5 actually agreed. They usually deadlock between labor and  
6 management.

7 Then the issue comes back to the Commission for  
8 public hearings and final action, either on the issue or to  
9 reject the issue.

10 The Wage Board can, by a two-thirds vote, bind  
11 the Commission should it agree at that super majority level.

12 CHAIRMAN BURTON: I'd assume it'd be a  
13 three-fourths vote if it's 2-2? Or is it 3-3, or what is the  
14 Wage Board.

15 MR. BROAD: It's a statute says two-thirds vote.  
16 I don't know what that means.

17 CHAIRMAN BURTON: Well if you got 2-2, it'd be  
18 three-quarters vote; right?

19 MR. BROAD: Yes, I would assume so, yes.

20 CHAIRMAN BURTON: Senator Lewis.

21 SENATOR LEWIS: No questions.

22 CHAIRMAN BURTON: Senator Hughes.

23 SENATOR HUGHES: With all of your experience,  
24 what can you do to make them come to decision making sooner?  
25 Are you going to just sit back and wait, as we have for years  
26 and years and years, for them to battle each other while people  
27 starve?

28 MR. BROAD: Well, I certainly understand that

1 because I was involved with a minimum wage initiative in 1996,  
2 which was put on the ballot because of the frustration with the  
3 Commission at that point, not taking action on the minimum  
4 wage.

5                   Fortunately or unfortunately, depending on your  
6 point of view, the Commission's process, its administrative  
7 process, is not is the quickest thing.

8                   And this Commission, since it's been  
9 reconstituted in September, held a public hearing in December on  
10 the minimum wage, and at our last meeting, voted to convene a  
11 minimum wage board, which will be appointed in the next several  
12 months and meet.

13                   The statute, however, requires that minimum wage  
14 increases can only occur two times a year, on July 1 or January  
15 1. So, if you reach a certain point, you're then six months  
16 slow.

17                   The other thing that our statute requires is that  
18 if the federal government raises the minimum wage, that we must  
19 automatically raise it to at least that level. At this point  
20 right now, the United States Congress is debating an increase in  
21 the minimum wage, so that we may, sooner or later, have some  
22 decision from them where they're going with the federal minimum  
23 wage. However, it is lower than the state minimum wage at this  
24 point by a considerable degree.

25                   I believe we're moving about as expeditiously as  
26 our process permits, and it's possible that we could have a  
27 report from the Wage Board maybe in early summer. Then we'd  
28 have to have a number of public hearings.

In order to have the minimum wage -- a minimum wage increase go into effect by January of next year, we would have to act sometime, I believe, in September or October at the very latest.

SENATOR HUGHES: Thank you.

CHAIRMAN BURTON: Senator Knight.

SENATOR KNIGHT: The federal minimum wage is what  
now?

MR. BROAD: I believe it's 5.15. Ours is \$5.75.

SENATOR KNIGHT: Okay, thank you.

SENATOR O'CONNELL: Move the nomination.

CHAIRMAN BURTON: Moved by Senator O'Connell.  
Family?

MR. BROAD: Actually, I have them all here. My mother, Dee Dee Rastoff; my wife, Joan Markoff; and my children, Hannah and Matty.

CHAIRMAN BURTON: Support, briefly.

MR. OWENS: I heard briefly, Senator.

I'm Howard Owens with the Consumer Federation of California and also the Congress of California Seniors.

And Barry works with -- not only with the people as they earn their wages but as they spend them, because he's been a Director on the Board of the Consumer Federation for quite sometime, and he's very creative there. I'm sure he's going to be great at this job.

Thank you.

MR. RANKIN: Tom Rankin, California Labor



1 Federation.

2 I hate to lose Barry on our side of the table  
3 here, but he's doing a wonderful job so far in representing the  
4 needs of workers as a Commissioner. I think he's the best labor  
5 appointment we've ever had on the Commission.

6 MR. CAMP: Bill Camp, with Sacramento Central  
7 Labor Council.

8 He's a fine gentleman, and we're honored to have  
9 him represent the community here.

10 MR. McKINNON: Matt McKinnon, Machinists Union.

11 Contrary to any confusion earlier, the Machinists  
12 Union's only taken one position on one nominee, and that's Barry  
13 Broad. And we're real proud of the work he's doing.

14 CHAIRMAN BURTON: He was a Woodworker Local.

15 MR. McKINNON: It wasn't. Actually, that was an  
16 aerospace guy, a good guess.

17 There's about 80 folks from Weed to Barstow, and  
18 Eureka to San Diego that are here, and they really came to see  
19 the Chairman.

20 But we're here to support Barry.

21 CHAIRMAN BURTON: Senator Johnston is here.  
22 You're here to introduce Mr. Broad?

23 SENATOR JOHNSTON: I am, thank you.

24 Barry Broad's known to all of you, and you're  
25 half way through this hearing, I suspect, or two-thirds through  
26 it.

27 SENATOR KNIGHT: About 90 percent.

28 SENATOR JOHNSTON: So, I look forward to the



1 vote.

2 [Laughter.]

3 MR. O'HARA: Mr. Chairman, Members, Gerald  
4 O'Hara, California Teamsters, also looking forward to the vote.

5 MR. HOLOBER: Mr. Chairman, Richard Holober,  
6 with the California Nurses Association.

7 I've worked very closely with Barry Broad on all  
8 the issues that are before the IWC, minimum wage as well as  
9 overtime. He's probably the expert in California on those  
10 issues. We're in strong support.

11 Thank you.

12 MR. JONES: Mr. Chairman and Members, J.P.  
13 JONES, United Transportation Union, echo what everyone else has  
14 said. Strongly support Barry Broad.

15 Thank you.

16 CHAIRMAN BURTON: Anyone in opposition?

17 Moved by Senator O'Connell. Call the roll.

18 SECRETARY WEBB: Senator Hughes.

19 SENATOR HUGHES: Aye.

20 SECRETARY WEBB: Hughes Aye. Senator Knight.

21 SENATOR KNIGHT: Aye.

22 SECRETARY WEBB: Knight Aye. Senator O'Connell.

23 SENATOR O'CONNELL: Aye.

24 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

25 SENATOR LEWIS: Aye.

26 SECRETARY WEBB: Lewis Aye. Senator Burton.

27 CHAIRMAN BURTON: Aye.

28 SECRETARY WEBB: Burton Aye. Five to zero.

1 CHAIRMAN BURTON: Congratulations, Barry.

2 MR. BROAD: Thank you.

3 CHAIRMAN BURTON: Senator Vasconcellos and  
4 Leslee Coleman.

5 SENATOR VASCONCELLOS: Mr. Chairman and Members,  
6 I have a letter being developed, but it's not out of the  
7 computer yet, but I'm here to present, for the Industrial  
8 Welfare Commission, the appointment of Leslee Coleman, my friend  
9 from Silicon Valley.

10 I've known Leslee for, I guess, five, six, or  
11 seven years. She's worked with the American Electronics  
12 Association, with Selectron now as International Governmental  
13 Affairs Coordinator, with the Silicon Valley Manufacturers  
14 Group, and has been educated as a social worker.

15 She has a lot of talent with a good sense of  
16 human values and a good sense of what I think industry needs in  
17 Silicon Valley. We've worked together on housing, on  
18 transportation, on the industry working on tax efforts to enable  
19 our county to function well.

20 She's been a partner with me at these various  
21 capacities in trying to help Silicon Valley develop our economy  
22 and prosper, and you know we have the best economy in the world  
23 at this point. It's beyond description and defies any kind of  
24 efforts.

25 I believe she brings to this Commission a good,  
26 sound sense of what the high tech industry is becoming, and how  
27 it properly can be interpreted, and how the wage and hour rules  
28 can be effectuated in a way that balances the needs of working

1 people and the realities of the industry in a way that is truly  
2 collaborative and truly smart. And I believe she's worthy of  
3 your consideration and, hopefully, your favorable approval of  
4 this nomination.

5 MS. COLEMAN: Thank you, Senator Vasconcellos.

6 Good afternoon, Senator Burton and Members of the  
7 Committee. My name, again, is Leslee Coleman. It's an honor to  
8 be here. It would be a true honor to serve on this Commission.

9 As John mentioned, I have a background in social  
10 work, and have spent a lot of years really trying to get people  
11 jobs, good jobs, knowing that their jobs, and jobs with dignity,  
12 really help them function in society.

13 And I'm lucky to work for a company that provides  
14 about 44,000 jobs are worldwide and has had the honor of working  
15 with the Legislature and with John to protect workers and also  
16 protect the economy.

17 It would be a true honor to serve with my fellow  
18 Commissioners on this Commission.

19 CHAIRMAN BURTON: We had a discussion about the  
20 stock option deal, which clearly, according to the Attorney  
21 General and Leg. Counsel, that that was outside the purview of  
22 the Commission.

23 Then, unbeknownst to me, they were going to  
24 discuss another issue, which was the issue of the, at least in  
25 my language, the computer service people, sending that to a Wage  
26 Board, which again, and I guess we'll have to get an opinion on  
27 that, is clearly outside the purview of the Commission. It's  
28 something we should deal with and should be dealt with in a



1 statute.

2 But I guess once your attorney, and we'll discuss  
3 that with Chairman Dombrowski, that if the attorney says -- did  
4 the attorney say that it's within your power to administratively  
5 deal with that issue?

6 MS. COLEMAN: That was our understanding.

7 CHAIRMAN BURTON: Did he cite anything?

8 MS. COLEMAN: When we asked if it was okay for us  
9 to go forward with doing a Wage Board, she said that in her  
10 opinion that that was appropriate.

11 I think what I'm learning here as part of the  
12 take-away, I'm not a lawyer nor a lobbyist up here. So, there's  
13 some learning process, I think, with this. But perhaps the  
14 take-away is that because the law is new, and there's a lot of  
15 uncertainty about it, perhaps as Commissioners it'd be prudent  
16 for us to seek some counsel from your office and from other  
17 interested parties as we go forward.

18 CHAIRMAN BURTON: First of all, if you had an  
19 attorney who knew what the hell she was doing, she could have  
20 read the law and told you.

21 I don't think you want to seek it from my office,  
22 or Senator Lewis', or anybody, because we all would have our  
23 bias.

24 But, clearly like the Leg. Counsel, who's just  
25 there to answer questions, up, down and sideways, and the  
26 Attorney General, and I will raise this with the Chairman.

27 But I mean, I'd just like to know under what part  
28 of the bill when again, and we had the conversation, that



1 clearly we gave the authority to the Commission to figure out  
2 what was hands-on and what made a manager and what didn't.

3 And basically the concept that I thought we had  
4 at least agreed on working through the bill was that the  
5 manager, that if a person was a manager with managerial duties,  
6 the fact he did some other hands-on stuff when the occasion  
7 called didn't make you less of a manager.

8 But if you're really somebody, you know, a stock  
9 boy or something like that, and they tell you to go read the  
10 time cards once a month, that that, in my mind, didn't make you  
11 a manager.

12 Then, at the suggestion of Senator Vasconcellos,  
13 we authorized the Commission to report back how the 4-10s flex  
14 time were working to see then if the Legislature wanted to  
15 basically, you know, expand that coverage.

16 But it was very limited as to what we gave the  
17 IWC the authority to do, the reason for that being, we were not  
18 happy with the IWC, and that's why they went to an overtime  
19 bill.

20 Senator Lewis.

21 SENATOR LEWIS: No questions.

22 CHAIRMAN BURTON: Senator Knight.

23 SENATOR KNIGHT: I was going to ask one question.

24 Everybody has indicated that the counsel has  
25 given an opinion as to their interpretation and suggested it was  
26 within your purview to provide the exemptions.

27 Do you have a copy of the written opinion from  
28 the counsel giving you that to you?

1 MS. COLEMAN: She gave it verbally. And she  
2 didn't -- what she gave us verbally was that she thought it was  
3 within our purview to appoint a Wage Board.

4 SENATOR KNIGHT: So, there was no written  
5 opinion?

6 MS. COLEMAN: Not that I'm aware of.

7 CHAIRMAN BURTON: Did you bring any family?

8 MS. COLEMAN: Friends and family aren't here.  
9 They're here in spirit.

10 SENATOR HUGHES: I move it.

11 CHAIRMAN BURTON: Witnesses in support?  
12 Witnesses in opposition?

13 Moved by Senator Hughes. Call the roll.

14 SECRETARY WEBB: Senator Hughes.

15 SENATOR HUGHES: Aye.

16 SECRETARY WEBB: Hughes Aye. Senator Knight.  
17 Senator O'Connell.

18 SENATOR O'CONNELL: Aye.

19 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

20 SENATOR LEWIS: Aye.

21 SECRETARY WEBB: Lewis Aye. Senator Burton.

22 CHAIRMAN BURTON: Aye.

23 SENATOR KNIGHT: Aye.

24 CHAIRMAN BURTON: Senator Knight Aye.

25 SECRETARY WEBB: Burton Aye. Senator Knight Aye.  
26 Five to zero.

27 CHAIRMAN BURTON: Thanks, Leslee.  
28 Congratulations.

1 MS. COLEMAN: Thank you very much.

2 MR. DOMBROWSKI: I've only been Chairman for  
3 about 72 hours.

4 [Laughter.]

5 CHAIRMAN BURTON: Mr. Young, are you here to  
6 introduce him? Former Member's courtesy.

7 MR. YOUNG: Thank you.

8 Mr. Chairman and Members, thank you very much.  
9 Bruce Young, representing the California Retailers Association,  
10 here to introduce Bill Dombrowski.

11 I've known him for about ten years and worked for  
12 him for the last six years. I can think of many reasons why he  
13 should be on this Commission. Certainly from a professional  
14 standpoint, he's fair and probably the most pragmatic person  
15 I've ever met.

16 I think the politics of it, even though he's  
17 certainly here representing the business interests, as you know,  
18 we were one of the few business groups that supported AB 60.

19 But I'd also like to appeal with you on a  
20 personal basis, because by the act of confirmation, I have the  
21 best of all worlds. I can never buy my boss breakfast, lunch or  
22 dinner again, or buy him a holiday gift.

23 So, with all those, I ask you to approve him.

24 CHAIRMAN BURTON: And I would hope you can't  
25 appear before the Commission.

26 MR. YOUNG: Absolutely.

27 MR. DOMBROWSKI: Like he ever did buy me  
28 anything.



1 [Laughter.]

2 MR. DOMBROWSKI: Thank you, Senators.

3 Just a couple of brief comments. We were one of  
4 the few business groups to support AB 60, and realized it was  
5 going to lead to a lot of contentious debate at the IWC, which  
6 we are seeing. But clearly, it does set some pretty solid  
7 parameters about what the IWC can and can't do. We are working  
8 through those as we go through this.

9 I think I do bring a reputation with the various  
10 parties who come before the Commission of being someone they can  
11 deal with, and we have done that on a number of other issues in  
12 front of the Legislature.

13 I think the way, if you want to just talk about  
14 the manager duties, what we have talked about is, is there a way  
15 for us to make sure that managers who are doing these incidental  
16 nonmanagerial tasks are still no less manager. We put language  
17 out there about a month ago. We had a hearing last Friday. It  
18 was very contentious, a lot of viewpoints expressed. We're  
19 going to have to go back. We'll talk to labor; we'll talk to  
20 the other parties and see if we can come to some agreement on  
21 it. I don't know if we will.

22 But that is kind of the example, I think, and  
23 what we're going to have to do at the IWC as we go through this.  
24 And so far, I am amazingly pleased by how we have been able to  
25 come to agreements on various issues that have come up, and look  
26 forward to working with the other Commissioners on that, with  
27 your approval.

28 CHAIRMAN BURTON: Well again, on the managerial



1 thing, I think at least it was clear to me from our discussions,  
2 and I'm not saying what would be clear to you, Bill, is that if  
3 somebody had managerial duties, and then did some hands-on work,  
4 it did not make them less of a manager.

5           What our concern is, you take somebody that  
6 clearly is like a stockboy, flipping burgers, or what, and you  
7 have them do a couple things, and all of a sudden, they become a  
8 manager. You start with somebody with managerial duties, and I  
9 gave examples of stuff that I know, and clearly if they have to  
10 do other stuff, either as part of their duties or to just make  
11 things, you know, some manager helps an old lady carry the bags  
12 out to her car, all of a sudden doesn't make them a clerk.

13           But I want to get into, and I think you know what  
14 that issue is, but the issue of how someone, and even Senator  
15 Lewis when he commented said that those people were once exempt  
16 from the eight-hour day, and these are the computer repair  
17 people, for want of a better word, and that we would have to,  
18 which I think, as I said, we should because I think \$50, \$60,  
19 \$70 an hour guys, they're not necessarily the ones that I'm  
20 concerned about.

21           But how the person could authorize to send it to  
22 the Wage Board, because it goes to the Wage Board, that means  
23 you've got jurisdiction. If it comes back to you with nothing,  
24 that means you've got jurisdiction to vote.

25           And I would really like, this isn't the first  
26 time that the counsel for the Commission has not either read the  
27 law or understood the law. I'm very interested in knowing her  
28 background, knowing what she thinks about when she issues these

1 opinions, and on what basis she gives them.

2 Because to get into a beef over something that I  
3 think would go through the Legislature in fairly quick order,  
4 and probably with a more or less unanimous vote, seems kind of  
5 stupid to me.

6 MR. DOMBROWSKI: I totally agree with you.

7 CHAIRMAN BURTON: Strike "kind of."

8 MR. DOMBROWSKI: Totally agree with you, and  
9 personally would love to see the Legislature take the issue off  
10 our table.

11 CHAIRMAN BURTON: It ain't on your table. By  
12 law, it can't be on your table.

13 MR. DOMBROWSKI: We'd love to see the Legislature  
14 do this.

15 The counsel advised us, and I can't remember the  
16 exact sections of the bill. We can get them for you. But at  
17 the previous meeting, the subject came up, and she gave the  
18 opinion, citing a section, that we could form Wage Boards on it.  
19 And then subsequently, at this last Friday meeting, reaffirmed  
20 that.

21 CHAIRMAN BURTON: She's the same one that thought  
22 you could deal with the other stuff.

23 MR. DOMBROWSKI: Same one.

24 CHAIRMAN BURTON: The AG said you can't.

25 MR. DOMBROWSKI: Same one.

26 CHAIRMAN BURTON: So, you may want to fire the  
27 lawyer.

28 MR. DOMBROWSKI: I haven't had a chance to find

1 out what my authority is as Chairman, but we would be looking, I  
2 guess.

3 CHAIRMAN BURTON: You take one vote, I'll get you  
4 two others.

5 MR. DOMBROWSKI: Okay.

6 I think we will have to go back and obviously  
7 look at that, and get some legal advice, and find out where we  
8 have gone, and get back on track.

9 CHAIRMAN BURTON: Because we were sitting there.  
10 It was you, and Bruce, and Rankin, and, I think, Vasco, and  
11 maybe Dee Dee Alpert, myself. We knew what was in it. We knew  
12 what we put in and what we didn't, and I don't remember this  
13 one.

14 MR. DOMBROWSKI: This one never came up. Came  
15 out of left field.

16 CHAIRMAN BURTON: It sure did.

17 Who's proposal was it; do you remember?

18 MR. DOMBROWSKI: It was the computer programmers,  
19 the temporary agencies that came forward a couple months ago,  
20 and they basically said they had never heard of AB 60 and  
21 weren't aware of what it did to them last year.

22 CHAIRMAN BURTON: Senator Lewis. Senator Hughes.  
23 Senator O'Connell. Senator Knight.

24 Got any friends here besides Bruce?

25 MR. DOMBROWSKI: Like Mr. Bosco said, I wasn't  
26 sure if I wanted to bring my wife and family.

27 CHAIRMAN BURTON: Witnesses in support?  
28 Witnesses in opposition?



1 SENATOR HUGHES: Move it.

2 CHAIRMAN BURTON: We do have a letter, actually.

3 What does this do to you now? Are you allowed to  
4 lobby and do this, or do you have to step back and make him do  
5 all the work or what?

6 MR. DOMBROWSKI: No, I can still lobby. I just  
7 can't have people buy me anything over ten dollars. I'm subject  
8 to the same restrictions as you and staff and others, but I can  
9 still lobby, just as Barry can still lobby.

10 CHAIRMAN BURTON: Call the roll.

11 SECRETARY WEBB: Senator Hughes.

12 SENATOR HUGHES: Aye.

13 SECRETARY WEBB: Hughes Aye. Senator Knight.

14 SENATOR KNIGHT: Aye.

15 SECRETARY WEBB: Knight Aye. Senator O'Connell.

16 SENATOR O'CONNELL: Aye.

17 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

18 SENATOR LEWIS: Aye.

19 SECRETARY WEBB: Lewis Aye. Senator Burton.

20 CHAIRMAN BURTON: Aye.

21 SECRETARY WEBB: Burton Aye. Five to zero.

22 CHAIRMAN BURTON: Congratulations, Bill.

23 MR. DOMBROWSKI: Thank you.

24 CHAIRMAN BURTON: Richard P. Gannon,  
25 Administrative Director, Division of Workers Comp.

26 SENATOR JOHNSTON: I'm here on time to say that  
27 Mr. Gannon is a steady hand, knowledgeable in the Workers'  
28 Compensation system. We would be wise to confirm him.



1 Thank you.

2 MR. GANNON: Thank you, Senator.

3 Thank you. It's my pleasure to be here, and my  
4 pleasure to be appointed and considered for confirmation as the  
5 Administrative Director of the Division of Workers Compensation.

6 It's a very interesting agency. We have a number  
7 of issues that we need to deal with, and I anticipate the  
8 opportunity to be involved in that.

9 My background very briefly is, things that were  
10 important in my life, I guess I'll start with the Marine Corps.  
11 I was a representative of the Operating Engineers in Southern  
12 California for 20 years, the last 11 of it was specializing in  
13 apprenticeship training.

14 Through the efforts of Jack Henning of the State  
15 Federation of Labor, I was appointed by Governor Wilson to the  
16 Workers Compensation Appeals Board as a labor member, and have  
17 served there since 1992. And my term ended in April of last  
18 year, and in June I was appointed as the Administrative  
19 Director.

20 CHAIRMAN BURTON: Senator Lewis.

21 SENATOR LEWIS: With the use of the new automated  
22 data collection system, what steps are you taking to ensure the  
23 privacy of employers and employees?

24 MR. GANNON: Well, you can separate the  
25 information that the Division has into two classes. One is  
26 information covered by the Public Records Act of the Government  
27 Code, which is contained -- which is the information that's  
28 contained in the case files where a dispute exists, and somebody

1 files an application for adjudication. This is a court record.

2 The administrative data on all claims, which is  
3 required by the Workers Comp. legislation and Labor Code 138.6,  
4 which was enacted in '93, has the objectives of helping us to  
5 figure out better ways of running the system and to provide a  
6 bank of data for the Legislature and policy makers to make  
7 decisions.

8 Number one, we're protecting it very adequately  
9 from hackers; meet or exceed the industry standards. It's one  
10 of the best in the nation for that.

11 Protecting from legal assault, it's -- the big  
12 issue there is individually identifiable information. Again,  
13 this is the information that is received by not the court  
14 records, but the information received by the information system  
15 from a variety of claims, insurance companies and self-insured  
16 employers. There is -- public access to this information is  
17 held and is allowed out only with very specific exceptions. The  
18 Division itself may use it to manage the Division. Specific  
19 agencies of the state may use it: the Division of Occupational  
20 Safety and Health, the Division of Labor Standards Research,  
21 Division of Health Services. These are outlined in the  
22 legislation and they're used for specifically stated purposes.

23 The only other opportunity is for bona fide  
24 statistical research. And there are very stringent rules on who  
25 qualifies, how it can be done. And there are requirements that  
26 they have to assure us that are not going to use it for any  
27 other way of making it out.

28 There's some confusion in this because there's a

1   journalistic exception which only applies to the court records.  
2   And these are public records, and therefore, under the Public  
3   Records Act, the journalistic exception was put into 138.7 in  
4   and amendment two years ago, I believe.

5                   But it does not apply to the information that we  
6   receive from the claims managers.

7                   SENATOR LEWIS: No more questions.

8                   CHAIRMAN BURTON: Senator Hughes.

9                   SENATOR HUGHES: What's your position in indexing  
10  the workers compensation benefit levels in order to keep pace  
11  with the increased cost of living?

12                  MR. GANNON: I can see -- I could say what the  
13  advantages are to that. It would allow a regular basis for  
14  increasing them.

15                  As of right now, I think most people would agree,  
16  since the last increase in 1996, that the benefits -- temporary  
17  disability, indemnity benefits -- have fallen behind. And  
18  there is an agreement they should be raised; it's just how  
19  much.

20                  Once a debate has occurred and legislation would  
21  be changed to allow indexing, it would establish what the proper  
22  ratio would be between benefits and the state average weekly  
23  wage. Then from that point on, that would control the level of  
24  indemnity benefits on the temporary indemnity, the type when the  
25  person is often healing; not the permanent disability benefits.

26                  SENATOR HUGHES: Thank you.

27                  CHAIRMAN BURTON: Where do we rank in the nation  
28  on workers comp. benefits?



1 MR. GANNON: We are in the lower -- in the  
2 forties. We're on the lower end of maximum --

3 CHAIRMAN BURTON: We're about where we are in  
4 public education?

5 MR. GANNON: I don't have any expertise in that  
6 one.

7 CHAIRMAN BURTON: We're about fortieth in the  
8 nation?

9 MR. GANNON: Yeah.

10 CHAIRMAN BURTON: What would it cost to bring us  
11 up? Do you have any idea what it would be, a benefit increase,  
12 to bring us up to the national average?

13 MR. GANNON: No, that's being widely debated  
14 right now in Senator Johnston's committee, or the committee  
15 hearings that are going on.

16 But the ranking, well, I don't know exactly what  
17 it would cost, no.

18 SENATOR HUGHES: Move the nomination.

19 CHAIRMAN BURTON: Moved by Senator Hughes.

20 Did you bring any family?

21 MR. GANNON: Yes, my wife Susan is here with me,  
22 and a couple of our staff came over to see what would happen.

23 CHAIRMAN BURTON: Witnesses in support, briefly.

24 MR. RANKIN: Tom Rankin, California Labor  
25 Federation.

26 Dick is a very good man for the job. He's got  
27 the experience in the union, and he's had a number of years on  
28 the Workers Comp. Appeals Board, during which he failed to



1 mention he went to law school because he got so into the workers  
2 comp. issue.

3 We're very happy with this choice.

4 MR. MARCUS: Mark Marcus, California Applicant  
5 Attorneys Association.

6 I've had the pleasure for years to read  
7 Mr. Gannon's decisions, because I represent injured workers. He  
8 has a fine knowledge of the system. He's a great choice. We  
9 support him.

10 MR. BRAKENSIEK: Carl Brakensiek, on behalf of  
11 the California Society of Industrial Medicine and Surgery.

12 We are strongly in support of Mr. Gannon. As a  
13 Commissioner, he has written a number of very scholarly  
14 opinions. Since he has been the A.D., he has been a consensus  
15 builder. He meets with all interest groups, and he's attempting  
16 to move the system forward.

17 We think he's the right person for the job.

18 MR. BURTON: I'm Robert Burton.

19 SENATOR HUGHES: Do we need to hear from this  
20 witness?

21 [Laughter.]

22 CHAIRMAN BURTON: He traveled a long way to be  
23 here.

24 MR. BURTON: I'm Robert Burton. I replaced  
25 Mr. Gannon, who was a class human being. I have worked with  
26 other people from the workers compensation field, from the labor  
27 movement, and nobody has matched him. He is an absolute  
28 gentleman, and certainly worthy of your confirmation.

1 CHAIRMAN BURTON: I'm sure Al Boardman's happy to  
2 hear that.

3 SENATOR HUGHES: Move.

4 CHAIRMAN BURTON: Moved by Senator Hughes.  
5 Opposition?

6 Call the roll.

7 SECRETARY WEBB: Senator Hughes.

8 SENATOR HUGHES: Aye.

9 SECRETARY WEBB: Hughes Aye. Senator Knight.

10 SENATOR KNIGHT: Aye.

11 SECRETARY WEBB: Knight Aye. Senator O'Connell.

12 SENATOR O'CONNELL: Aye.

13 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

14 SENATOR LEWIS: Aye.

15 SECRETARY WEBB: Lewis Aye. Senator Burton.

16 CHAIRMAN BURTON: Aye.

17 SECRETARY WEBB: Burton Aye. Five to zero.

18 CHAIRMAN BURTON: Congratulations.

19 MR. GANNON: Thank you.

20 CHAIRMAN BURTON: Linda Moulton-Patterson,  
21 Member, California Integrated Waste Management Board.

22 MS. MOULTON-PATTERSON: Good afternoon,  
23 Mr. Chairman and Members of the Committee.

24 I'm very pleased to be Governor Davis' first  
25 appointment to the Integrated Waste --

26 CHAIRMAN BURTON: Let's hope you're not his last.  
27 You're still short some members, aren't you?

28 MS. MOULTON-PATTERSON: Yes.

1                   And I am very honored and pleased to be here  
2 before you today for my confirmation hearing.

3                   I would like to, so I don't forget, just take the  
4 time to introduce my husband, Jerry Patterson, who's here to  
5 support me, and friends, Ron and Bonnie Bruce.

6                   I have a very brief statement, if I may  
7 continue.

8                   Since I was appointed to the Board last August as  
9 the member representing the public, I worked hard to promote the  
10 Board's efforts to increase waste diversion, stimulate new  
11 markets for recycled materials, and ensure a clean and safe  
12 environment. It's been a challenging seven months, but a deeply  
13 rewarding experience for me.

14                  As I outlined in my brief statement of goals, I  
15 have focused on meetings with our many stakeholders to gain  
16 their perspectives and learn all of the complexities of waste  
17 diversion and solid waste management.

18                  During the next year, I hope to use the  
19 information I gathered to help ensure that every city and county  
20 in California fully achieves the goals of AB 939 within the  
21 shortest time possible.

22                  Californians traditionally are strong supporters  
23 of the environment, and recycling is no exception. Since 1989,  
24 the statewide diversion rate has soared from an estimated 10  
25 percent to 37 percent in 1999. In the last year alone, the  
26 amount of materials diverted from landfills jumped by 20  
27 percent. With continued Board efforts to help local governments  
28 identify and implement the best programs possible, and through



1 ongoing public education efforts, I believe the 50 percent  
2 mandate that was once thought impossible is within our reach.

3           Because of my background as an educator and local  
4 elected official, many of my goals focus on these two important  
5 areas. Cities and counties are responsible for implementing  
6 waste diversion programs to reach their AB 939 mandates.

7           As a former mayor and council member, I recall  
8 all too well the frustrations I sometimes had in dealing with  
9 state agencies that did not always understand the difficulties  
10 we faced.

11           My goal is to establish win-win relationships  
12 with our partners at the local level and to be their advocate on  
13 the Board, and do everything I can to help them cut their trash  
14 in half.

15           As an educator, I was a teacher, administrator,  
16 and school board member, so I know first-hand how important and  
17 valuable education is. That's why I'm pleased to inform you  
18 today that Secretary Hickox has approved my proposal to  
19 establish a new Office of Education at the Waste Board to  
20 promote environmental education for all of the boards and  
21 departments within Cal EPA. As the only Cal EPA entity with an  
22 education mandate, we have developed and implemented a  
23 nationally acclaimed recycling education curriculum program for  
24 K through 12 students statewide. Our goal now is to take our  
25 expertise and help other boards and departments develop and  
26 enhance environmental education programs.

27           Some of you may recall that Senator Roberti, with  
28 whom I now serve on the Waste Board, appointed me to the



1 California Coastal Commission in 1991. I deeply appreciated  
2 that opportunity to serve the people of California, and I'm  
3 equally honored to have the opportunity to serve today on the  
4 Integrated Waste Management Board.

5 I ask for your support and thank you very much.

6 CHAIRMAN BURTON: Senator Chesbro.

7 SENATOR CHESBRO: Yes, Mr. Chairman and Members,  
8 it gives me a great deal of pleasure here today to offer my  
9 words of support for Linda Moulton-Patterson. I think the  
10 Governor made a terrific appointment.

11 As you know, I represented the Senate on the  
12 Waste Board for eight years. I was -- although there is no  
13 designated slot for a local elected official, I did bring both  
14 strong support for the mandate for AB 939 in reducing the  
15 state's waste, as well as a local government perspective.

16 That perspective has been lacking on the Board,  
17 even though I certainly think Senator Roberti was a great  
18 appointment, and I'm pleased that the Governor saw that that was  
19 a gap and filled it with somebody who is both strongly committed  
20 with a good track record of environmental protection, but also  
21 an understanding of the needs of local government, which AB 939,  
22 after all, placed most of the responsibility for reducing the  
23 state's waste stream on local governments. And it's a  
24 partnership between local government and the state that has  
25 gotten us to the point that we have with waste reduction in  
26 California.

27 And I think that Linda Moulton-Patterson will do  
28 a terrific job of continuing that partnership and giving the

1 Board credibility with local governments.

2 So, I'm happy to lend her my full and  
3 whole-hearted support.

4 CHAIRMAN BURTON: Senator Dunn.

5 SENATOR DUNN: Thank you, Senator.

6 I am sure there have been many great comments  
7 mentioned about this individual. I just wanted to let the  
8 Committee know, this is an individual who I have known for many,  
9 many, many years. We've fought many battles together in Orange  
10 County. And simply put, I recommend her highly, highly for this  
11 position. She will be a tremendous asset to the entire State of  
12 California.

13 CHAIRMAN BURTON: Thanks.

14 How many vacancies are there, do you know, on the  
15 Board still?

16 MS. MOULTON-PATTERSON: Yes. There are two; one  
17 public and one environmental slot.

18 CHAIRMAN BURTON: And there are how many members  
19 on the Board?

20 MS. MOULTON-PATTERSON: A total six, four  
21 presently and two vacancies.

22 CHAIRMAN BURTON: So, you're one over the quorum.

23 MS. MOULTON-PATTERSON: We need four votes for  
24 everything.

25 CHAIRMAN BURTON: That's right. Anybody sick,  
26 you can't do business?

27 MS. MOULTON-PATTERSON: That's right.

28 CHAIRMAN BURTON: The environmental slot's been

1 vacant since January of '99. How about the public?

2 MS. MOULTON-PATTERSON: It just became vacant the  
3 end of February. Well, actually, January 1st, and then the  
4 member for -- I guess he's allowed to stay on two months.

5 So, we've had our first meeting as four members.

6 CHAIRMAN BURTON: He can't stay on until they're  
7 replaced?

8 MS. SABELHAUS: They stay on for just 60 days.

9 CHAIRMAN BURTON: Are all the appointees Governor  
10 Davis', except for the legislative ones?

11 MS. MOULTON-PATTERSON: There's Senator Roberti,  
12 your appointee, and Dan Eaton, our Chairman, who's Assembly, and  
13 then myself, and then the industry position, Mr. Jones, was just  
14 reappointed by Governor Davis just on the last day, I believe,  
15 that he could be, on February 28th.

16 CHAIRMAN BURTON: How is the Chairman picked?  
17 Are they elected by the Board or what?

18 MS. MOULTON-PATTERSON: Yes, he was elected by  
19 the majority of the Board before I became a member.

20 CHAIRMAN BURTON: Thank you.

21 Senator Lewis.

22 SENATOR LEWIS: You'd mentioned that you are  
23 fairly confident that we're going to reach the 50 percent  
24 diversion mandate. When do you anticipate that would be  
25 realized?

26 MS. MOULTON-PATTERSON: Well, many of the  
27 cities -- at the end of this year, you know, is our timeline to  
28 make 50 percent. Now, obviously, all of them aren't going to.



1 And with Senate Bill 1066, it does give us the option of  
2 granting extensions or making some alternative arrangements for  
3 unique situations.

4 We've had workshops up and down the state to let  
5 cities and counties know about that.

6 SENATOR LEWIS: Do you have a target year where  
7 you think that the average rate in California will be 50  
8 percent?

9 MS. MOULTON-PATTERSON: Well, we hope within the  
10 next couple of years.

11 I might say, Senator, that one of the things that  
12 I as a Board member, we are looking at the 50 percent, but we're  
13 also really looking at the programs that each city and county  
14 have, because some of the cities might be off a number or two,  
15 but they have great programs and are making good faith efforts.  
16 I think that's very important we take that into consideration.

17 SENATOR LEWIS: What percent are we at statewide  
18 right now?

19 MS. MOULTON-PATTERSON: We're at 37 percent, up  
20 from -- in 1990, it was 10 percent, and we've gone up to 37  
21 percent.

22 So, we've made great progress, and we're hoping  
23 to make that 50 percent statewide in the next year or so.

24 SENATOR LEWIS: How is Orange County stacking up?

25 MS. MOULTON-PATTERSON: Orange County is doing  
26 very well. I believe overall we're at 48 percent. I know my  
27 city, Huntington Beach, had a new base year diversion rate  
28 study, and they're now at 63 percent. Fountain Valley is at 47



1 percent. They've worked very hard as a group and have a good  
2 program.

3 SENATOR HUGHES: The tire dumping problem, how is  
4 your Board dealing with reducing the stockpile of waste tires in  
5 our state?

6 MS. MOULTON-PATTERSON: Well, we're certainly  
7 very, very concerned because it's such a safety and health  
8 issue. And there's 30 million tires a year that go into the --  
9 that are waste tires.

10 About 18 million of those are going to  
11 alternative uses, and we're really encouraging and giving grants  
12 and working with different jurisdictions and businesses to help  
13 make these possible, such as the rubberized asphalt that we're  
14 using on playgrounds, and many other things that I would have  
15 never imagined that they can use tires.

16 SENATOR HUGHES: Are there any new innovative  
17 uses of these tires? There's so many of them around.

18 Could you tell us if anyone's come before the  
19 Board with any new innovative uses of these tires?

20 MS. MOULTON-PATTERSON: Since I have been there,  
21 there have been -- you know, the rubberized asphalt is certainly  
22 one.

23 Then I visited, down in the Central Valley, a  
24 generator that burnt tires as energy and produced energy.  
25 Unfortunately, the Modesto energy plant closed down, which did  
26 take care of all the tires that were left over at the Westly  
27 tire fire, and they provided energy to the Bay Area.

28 So, we're always looking, and getting grants,

1 working with businesses to encourage those industries because  
2 they're very, very important.

3 SENATOR HUGHES: There's a bill before us now to  
4 increase the tire disposal fee to two dollars. How will this  
5 additional money be used if it's approved?

6 MS. MOULTON-PATTERSON: Well, we are certainly in  
7 support of that bill, because at this time, we only have five  
8 inspectors statewide, and there are many illegal tire piles  
9 around.

10 So, we would certainly use the money to increase  
11 inspectors, for outreach to counties and cities, for education,  
12 to work with businesses. There are many ways that we could use  
13 that. It certainly affects public safety, in my opinion.

14 SENATOR HUGHES: Thank you.

15 CHAIRMAN BURTON: You introduced your family and  
16 friends.

17 Any witnesses in support?

18 MS. HUNTER: Mr. Chairman and Members, Yvonne  
19 Hunter with the League of California Cities.

20 Senator Chesbro gave my testimony, so I will  
21 concur with all of that.

22 We think Ms. Moulton-Patterson is uniquely  
23 qualified to serve on the Waste Board. She's been accessible,  
24 thoughtful, and we look forward to working with her in the  
25 future.

26 Thank you.

27 MR. THEISEN: Mr. Chairman and Members of the  
28 Committee, good afternoon. Mark Theisen with the Gualco Group

1 on behalf of Norcal Waste Systems.

2 Norcal's President and CEO communicated his  
3 support and that of the company's in a letter to you,  
4 Mr. Chairman, dated March 7th for the nomination of  
5 Ms. Moulton-Patterson.

6 I'm here just to echo the comments that Senator  
7 Chesbro, Senator Dunn, and of course the lobbyist for the League  
8 of California Cities, Ms. Hunter.

9 We urge you to confirm her appointment.

10 Thank you.

11 CHAIRMAN BURTON: Moved by Senator Hughes.

12 Anybody in opposition?

13 Call the roll.

14 SECRETARY WEBB: Senator Hughes.

15 SENATOR HUGHES: Aye.

16 SECRETARY WEBB: Hughes Aye. Senator Knight.

17 SENATOR KNIGHT: Aye.

18 SECRETARY WEBB: Knight Aye. Senator O'Connell.

19 Senator Lewis.

20 SENATOR LEWIS: Aye.

21 SECRETARY WEBB: Lewis Aye. Senator Burton.

22 CHAIRMAN BURTON: Aye.

23 SECRETARY WEBB: Burton Aye.

24 CHAIRMAN BURTON: All Members on the roll will  
25 be recorded Aye.

26 [Thereupon SENATOR O'CONNELL  
27 was recorded as an Aye vote,  
28 making the final vote 5-0

1 for confirmation.]

2 MS. MOULTON-PATTERSON: Thank you very much  
3 [Thereupon this portion of the  
4 Senate Rules Committee hearing was  
5 terminated at approximately 2:41 P.M.]

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

4<sup>th</sup> day of April, 2000.

  
EVELYN J. MIZAK  
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APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR JOE BACA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

MEMBERS ABSENT

SENATOR JACK O'CONNELL

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

DIANA M. BONTA, Ph.D., Director  
Health Services Department

SENATOR DEBORAH ORTIZ

MARIE KUFFNER, Physician  
California Medical Association

JUSTIN MALAN  
Environmental Health Directors Association

CARMELA CASTELLANO, Chief Executive Officer  
California Primary Care Association





1 DENISE MARTIN, President  
California Association of Public Hospitals and  
2 Health Systems

3 BETTE HINTON, M.D.  
4 Yolo County Health Officer  
California Conference of Local Health Officers

5 ART NALDOZA  
6 La Cooperativa

7 MICHAEL J. ARNOLD  
8 California Children's Hospital Association  
California Dialysis Council  
9 California Clinical Laboratory Association

10 JOHN VALENCIA  
11 California and United States Hispanic Chambers of Commerce

12 TERRI COWGER  
California Childrren's Lobby  
13 Hemophilia Council of California

14 DOUG HITCHCOCK  
15 California Healthcare Association

16 FRANK RAMIREZ  
CAFÉ de California  
17 American GI Forum

18 TERRI THOMAS  
19 Women's Appointment Project

20 RITA SCARDACI, Director of Public Health  
Plumas County  
21 President, County Health Executives Association

22 STEVE BAKER  
23 California Association of Professional Scientists

24 BETH CAPELL  
Service Employees International Union

25 SHERYL L. GRANZELLA, Member  
26 California Horse Racing Board

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1 LINDA MUIR  
2 Los Angeles Turf Club

3 MARIE G. MORETTI, Member  
4 California Horse Racing Board  
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## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Senator Ortiz.

SENATOR ORTIZ: Thank you, Mr. President and Members, particularly for taking us out of order. I do have to be in committee.

It's my honor --

CHAIRMAN BURTON: May I say this?

SENATOR ORTIZ: Three minutes.

CHAIRMAN BURTON: No, three bills I've got in your committee. Take all the time you want.

SENATOR ORTIZ: All right.

Thank you, Mr. President. It really is my honor to be here today, introducing Dr. Diana Bonta, who comes to us as the Director of Health Services but from the City of Long Beach. She served as the Director of the Department of Health and Human Services.

In that capacity, she was responsible for the management of public health operations and social service programs, public health issues, which are very dear to my heart. She led a number of innovative programs, such as the Proud Fathers of the Hood, which reaches out to at-risk young fathers-to-be, and educates them on how to be good parents.

She also was very successful in initiating the Community Challenge Grant Program, which provides teen pregnancy prevention services and family preservation programs. Clearly, she understood that that was a key to a strong and healthy community, and safe children, and functional families.

1                   She is particularly unique because she has  
2 knowledge of programs on the local level. This is something  
3 that's very important as a Director of Health Services. I do a  
4 lot in the area of health, and I truly appreciate someone who's  
5 had an understanding of how to run local programs, and what we  
6 do when we fashion policy, how to make it work on a local  
7 level.

8                   Again, she knows these issues from the ground  
9 up. She's established a lot of very successful programs.

10                  She, I think, will service this administration  
11 well. She's very visionary, but she also understands how to run  
12 a department of this size.

13                  She's done great job thus far. I'm really proud  
14 to be able to introduce her.

15                  I won't spend a lot more time, other than to  
16 close and give you a few tidbits on her credentials.

17                  Clearly, she received her Masters in Public  
18 Health from the University of California at Los Angeles, School  
19 of Public Health, and she received her doctoral degree from  
20 UCLA's School of Public Health as well.

21                  It is with great pleasure that I bring her before  
22 you today, and I urge your respectful consideration of her  
23 nomination.

24                  CHAIRMAN BURTON: Thank you, Senator.

25                  Doctor.

26                  SENATOR ORTIZ: I want to make sure you nominate  
27 her though. I'm not going to leave until she's taken care of.

28                               [Laughter.]

1 CHAIRMAN BURTON: Who's vice chairing your  
2 committee?

3 SENATOR ORTIZ: You do have three bills before me  
4 today, Mr. Chairman?

5 CHAIRMAN BURTON: Who's the Vice Chair?

6 SENATOR ORTIZ: They're not starting until 1:45.

7 CHAIRMAN BURTON: Go ahead, Doctor.

8 DR. BONTA: Good afternoon, Mr. Chairman and  
9 Members of the Senate Rules Committee. Thank you for your time  
10 this afternoon.

11 I'm excited by the opportunity that has been  
12 afforded to me by Governor Gray Davis to lead the California  
13 Department of Health Services.

14 The Department is one of the largest and most  
15 complex health and public health organizations in the country.  
16 With a budget of more than 234 billion, and over 5600 positions  
17 working out of more than 60 locations throughout California, the  
18 administrative demands alone are significant.

19 But beyond these requirements, the Department  
20 faces many health and public health challenges and opportunities  
21 as well. Environmental concerns, the threat of bio-terrorism,  
22 emerging infectious diseases, fraud in the Medi-Cal program,  
23 ensuring that quality health care services are available, and  
24 responding to an ever diversifying California population are  
25 just some of the issues that the Department faces on a daily  
26 basis.

27 I come to the position with 27 years of working  
28 in health care and in public health as a nurse and as a health



1 program administrator working in New York and in the state of  
2 California. I've had the benefit of being educated at one of  
3 California's finest public universities, UCLA, where I received  
4 both my Masters and doctorate degrees in public health.

5 While at UCLA, I had extensive course work in  
6 community health sciences, statistics, data analysis,  
7 epidemiology, program and policy development, and evaluation.  
8 And I had the opportunity to interact with faculty members, many  
9 of them nationally and internationally recognized experts in  
10 their fields, whom today I count among my colleagues and  
11 friends.

12 Obviously, running an organization as large as  
13 the Department of Health Services is a task greater than the  
14 abilities of any single person. To that end, I have begun the  
15 process of pulling together a talented and diverse team of  
16 managers to guide the Department over the next several years. I  
17 intend to see that they are guided not only by the standards of  
18 law and regulation, but also by managerial flexibility and by  
19 good old common sense.

20 I've had the opportunity to meet with most of you  
21 and with members of your staff over the last several weeks and  
22 months to discuss the issues of particular importance and  
23 concern to each of you, and there is certainly no shortage of  
24 issues. These are complex, programmatic, and policy issues that  
25 do not lend themselves to easy solutions and will not be  
26 resolved over night. However, I'm committed to continuing to  
27 have a dialogue with you and other stakeholders to work toward  
28 solutions to these challenges. Keeping the lines of

1 communication open is necessary to ensuring that public health  
2 policy issues are discussed with input from those communities  
3 that are served.

4 As a public health professional, I know that  
5 science cannot always provide all of the answers to the issues  
6 that we face. The practice of public health is, at times, as  
7 much an art as it is a science.

8 The Department needs to assess its programs and  
9 services, and begin from within to identify ways in which it can  
10 be a stronger department.

11 As issues and problems are identified, the  
12 solutions implemented will be done so with a focus on ensuring  
13 that quality care and services are being delivered in a fashion  
14 that allows us to maintain the trust of the public that taxpayer  
15 dollars are well spent to protect and improve California's  
16 health.

17 As I wrote in my goal statement that I submitted  
18 to you last week, the people of California deserve the highest  
19 quality health and public health programs. In my tenure as  
20 Director, I will ensure that the Department of Health Services  
21 continually strives to meet that expectation so that we can  
22 continue to improve the health of all Californians.

23 Thank you.

24 CHAIRMAN BURTON: Thank you.

25 What steps is the Department taking, if any, to  
26 reduce the drop off in Medi-Cal coverage that seems to be  
27 occurring as families leave welfare and move on to the  
28 employment rolls?

1 DR. BONTA: This is a very important item for us,  
2 certainly to increase the number of individuals that are  
3 enrolled in the Medi-Cal program.

4 We're trying to simplify the process. There was  
5 recently -- the Medi-Cal Public Policy Institute did a report of  
6 beneficiaries, actually interviewed Medi-Cal beneficiaries; 92  
7 percent of them were satisfied with the services that are  
8 rendered, but they indicated that we need to simplify the  
9 process.

10 So, we're continuing to do that, looking to  
11 enhance our mail-in application, to expand it, not only for  
12 children, as is currently with Healthy Families and with the  
13 Medi-Cal program, but to adults as well.

14 We're looking also to and working on simplifying  
15 the quarterly reports.

16 We have an enhanced media campaign so that we can  
17 attract individuals who may not know that they're eligible for  
18 both Medi-Cal and Healthy Families as well.

19 CHAIRMAN BURTON: That deals with people who are  
20 off and were trying to get in the program.

21 How about the ones that were on it during welfare  
22 and then dropped off when they got jobs? Do you have a way of  
23 monitoring them?

24 The counties claim that it's difficult to locate  
25 the people.

26 I guess the bottom line is, are you working with  
27 the counties to come up with, one, a way of finding these  
28 people; and two, to simplify?



1                   You know, people look at the form, and when we're  
2 dealing with people on Medi-Cal, we're not dealing necessarily  
3 with college graduates and, in some instances, high school  
4 graduates, and have the form kind of simplified so that about a  
5 million uninsured children maybe could end up getting some form  
6 of health care?

7                   DR. BONTA: Yes, sir. It's very much of a  
8 priority for us to continue to meet with the county  
9 representatives so that we're looking at some of the hurdles  
10 that they're facing, whether it's in their computer problems, or  
11 whether it's in their staffing issues, or the complexity of the  
12 forms, to bring them in as part of the dialogue so that we can  
13 look at: how do we simplify this; getting their input;  
14 involving them in discussions, and making some of those changes.

15                   We have a task force that involves the county and  
16 some of the county executives.

17                   CHAIRMAN BURTON: Keep us apprised of that,  
18 especially Senator Solis's subcommittee on the measure.

19                   DR. BONTA: Be happy to.

20                   CHAIRMAN BURTON: How are you approaching the  
21 issue of provider rates in the program, which are woefully  
22 inadequate to almost, I don't know any providers that are  
23 getting adequate compensation? It's pretty tough to keep them  
24 in the program.

25                   How do you decide when and where rate increases  
26 would be warranted?

27                   DR. BONTA: I know that the level of rates right  
28 now, that they are low. This has been a historical problem.



1 So, it's something that it's going to take time to rectify.

2 There have been some very modest increases, and  
3 certainly in the CCS program, a five percent increase was  
4 included. Some of the specialty areas, we saw in this year's  
5 budget an increase in that.

6 There needs to be continual work on that to  
7 identify priorities for changes and adjustments, and so we're  
8 continuing to work on that.

9 CHAIRMAN BURTON: Well, you can suggest rate  
10 increases to, I guess, either the Governor or Finance; right?

11 DR. BONTA: That's correct.

12 CHAIRMAN BURTON: And it's got to be approved in  
13 the budget; right?

14 DR. BONTA: Correct, sir.

15 CHAIRMAN BURTON: So, how do you make your  
16 determination?

17 I think it's Finance's responsibility to figure  
18 out the amount of money available, but I think that your  
19 Department ought to really try to be bold enough to figure out  
20 exactly, without going to the total back to fee-for-service,  
21 what would be right.

22 Because when providers drop off, then the level  
23 of care drops off.

24 DR. BONTA: Part of what I've been doing, sir, is  
25 attending the budget sessions, both in the Assembly and the  
26 Senate. This is the first time, I believe, that a Health  
27 Department Director has attended in many years.

28 And I'm going there to learn first-hand from some

1 of the stakeholders who are coming, testifying in the committee  
2 hearings about the some of the impacts that our rates have  
3 throughout California so that I can convey that as well.

4 CHAIRMAN BURTON: They don't come to you on their  
5 own?

6 DR. BONTA: Oh, definitely, they come to me also.  
7 Definitely.

8 CHAIRMAN BURTON: There's some concern among some  
9 individuals that with Medi-Cal being linked to welfare, that  
10 some people don't like to join the program because of, I guess,  
11 what they consider to be a stigma.

12 Could we either figure out a way, should we  
13 figure out a way to de-link it, or what could we do to mitigate  
14 the perception people have that if they provide health care for  
15 their kids through this program, somehow they're like on  
16 welfare?

17 DR. BONTA: I think there's been a lot of  
18 discussion about the potential of a stigma being attached to the  
19 Medi-Cal program. I'm not sure that that's totally accurate. I  
20 think some of it may be perception.

21 We need to be able to work, and evaluate, and  
22 interview some of the beneficiaries. The Medi-Cal Policy  
23 Institute, for instance, their report showing the high degree of  
24 satisfaction, some of has to be by word of mouth, of  
25 beneficiaries being able to talk to other individuals and  
26 encourage them to apply for the program.

27 Part of the simplification, working with the  
28 counties, et cetera, will get us a better handle on what exactly

1 is stigmatized in the program, and work diligently to try and  
2 remove some of those barriers.

3 Certainly the advertising and media campaign is  
4 part of that.

5 CHAIRMAN BURTON: Couple more questions on a  
6 different issue.

7 You've got responsibility for the Safe Drinking  
8 Water Act to set standards as close as feasible to the public  
9 health goals of the Office of Environmental Health Hazard  
10 Assessment.

11 Why has the Department not lowered the DBCP  
12 standards? Just haven't gotten to it, or what?

13 DR. BONTA: In fact, it's about 40 percent -- if  
14 you look at a million people, about 40 percent of individuals  
15 will get cancer, unfortunately, in a lifetime.

16 When we've been looking at the DBCP rates, we've  
17 been looking at what kinds of impacts would occur from changing  
18 some of the standards.

19 We've looked at the current maximum level --

20 CHAIRMAN BURTON: Forty percent?

21 DR. BONTA: If you looked at a population of a  
22 million people, about 40 percent of that million would have  
23 diagnosis of cancer in a lifetime.

24 CHAIRMAN BURTON: Does that 40 percent hold as  
25 you go up to two million? Does it drop down, or what?

26 DR. BONTA: I'm not sure of that, sir.

27 CHAIRMAN BURTON: It seems like a hell of a lot,  
28 40 percent.



1 DR. BONTA: It is a lot. Cancer rates continue  
2 to be a problem in the overall population.

3 CHAIRMAN BURTON: I know, but 40 percent --

4 DR. BONTA: Of a million.

5 CHAIRMAN BURTON: But unless you're picking a  
6 million that live near a toxic dump, 40 percent of a million,  
7 that's a hell of a high percentage.

8 DR. BONTA: It's all types of cancer.

9 CHAIRMAN BURTON: I understand that. I'm just  
10 surprised that it would be that high.

11 DR. BONTA: When we've been looking at the  
12 maximum level of DBCP in drinking water, we have looked at, you  
13 know, how we measure this would be with a theoretical increase.  
14 We've looked at changing the standards would cause about only a  
15 very a small number of additional cancer risk.

16 So, our recommendation at this point has been  
17 that the maximum level of the pesticide DBCP in drinking water  
18 should remain the same because the reduction would not result in  
19 a significant effect on the cancer rates on drinking water.

20 I know this has been something that has been of  
21 concern. It's going to be something that we will continue to  
22 monitor. It's very important to us to have as best the levels  
23 of standards in drinking water for all of California, so it is a  
24 major issue for us.

25 We're working with the California Environmental  
26 Protection Agency as well in doing some of the work on DBCP.

27 CHAIRMAN BURTON: So, it's 40 percent, and then  
28 if you did something about the standards of DBCP, it wouldn't



1 appreciably reduce the 40 percent?

2 DR. BONTA: That's correct.

3 Also, the costs are part of the mandate that the  
4 Health Department is currently tasked with looking at when we're  
5 evaluating this as well.

6 The cost that we were looking at, in order to  
7 reduce one-tenth of the cancer cases per year, there's a cost  
8 for the public water system of an estimated \$111 million. So,  
9 that's significant.

10 While it's always difficult, and I hate to put a  
11 cost on a person's life, this has been part of the evaluation  
12 that has gone into the determination whether or not to change  
13 the standard.

14 CHAIRMAN BURTON: I thought there were studies  
15 that concluded the current standard does not protect public  
16 health. Those studies are irrelevant, or what?

17 DR. BONTA: It's my understanding on this issue,  
18 the California Environmental Protection Agency establishes a  
19 public health goal. In doing the goal, they were looking at  
20 lowering the amount of DBCP as a potential goal.

21 It then comes to the Department of Health  
22 Services to actually look at whether or not that is permissible  
23 in terms of would it make an effect on the health consequences  
24 of individuals, and would it have a monetary effect on the water  
25 systems as well.

26 CHAIRMAN BURTON: Where do you get the trade-off?  
27 What's the percentage of deaths versus the percentage of the  
28 amount of cost? Where does the utility of the conduct equal the

1 magnitude of the risk? Has somebody got a formula?

2 DR. BONTA: They develop -- it's my understanding  
3 they use cost data, and the cost data comes from our own  
4 information that the Department of Health Services has from the  
5 water supply system.

6 CHAIRMAN BURTON: Did they get it from the people  
7 that would be affected if you made them change the standard?

8 DR. BONTA: I believe so.

9 CHAIRMAN BURTON: Does anybody ever double-check  
10 their numbers?

11 DR. BONTA: We do not use just the industry  
12 numbers. I know that that had been concern of mine and other  
13 individuals, whether or not the cost figures were strictly from  
14 industry, and that's not the case.

15 When I talked with staff, they indicated we also  
16 have figures that we're able to put together as part of our  
17 ongoing --

18 CHAIRMAN BURTON: Would there be some place  
19 where, you know, you figure, well, one-tenth of one percent  
20 doesn't do it; four-tenths of a percent does do it?

21 If you're supposed to equate life with cost,  
22 where do they interconnect and go the other way? Do you have a  
23 formula on that?

24 DR. BONTA: I believe the staff do. I don't have  
25 it handy and available, but I could find out for you.

26 CHAIRMAN BURTON: Yes, maybe we'll get a letter  
27 to you. It'd just be kind of interesting.

28 Thank you very much, Doctor.

1 Senator Lewis.

2 SENATOR LEWIS: While we're on that topic, and  
3 out of curiosity, isn't there a pretty good correlation between  
4 the increase in life expectancy and the increase in cancer  
5 rates?

6 DR. BONTA: I would think that there'd be a  
7 correlation, certainly, in terms of the two of them.

8 SENATOR LEWIS: My understanding is, especially  
9 with, for example, the male population, as men live  
10 substantially longer, there're going to be huge increases in the  
11 rates of prostate cancer.

12 DR. BONTA: That's correct.

13 SENATOR LEWIS: I wanted to ask you about the  
14 airing of a show last October on 60 Minutes, where they were  
15 talking quite a bit about Medi-Cal fraud and other issues.

16 One of the things that was mentioned on the show  
17 was pretty shocking, the differentiation of prices from  
18 over-the-counter prices to from Medi-Cal pays.

19 For example, an anti-shock stabilizer,  
20 over-the-counter price is five-and-a-half dollars, and Medi-Cal  
21 pays 162. Knee supports, \$25 versus \$80, and support panty  
22 hose, \$18 versus \$90.

23 How did you get into this mess?

24 DR. BONTA: When that aired, it was a shock to  
25 me, too, in terms of some of the differences in prices.

26 The difference on some of the devices that are  
27 over-the-counter devices, and what we are actually paying for is  
28 that they're not supposed to be over-the-counter devices.



1 They're supposed to be actually fitted by a practitioner,  
2 supposed to involve the cost for that fitting, for the  
3 additional prescription based with it.

4                   Unfortunately, what we were seeing as part of the  
5 fraudulent activity was, in fact, that sometimes the durable  
6 medical equipment providers were actually utilizing an  
7 over-the-counter device without the special fittings, without  
8 the additional measures.

9                   In the area, for instance, of support panty hose,  
10 this is really looking at individuals who have had circulatory  
11 problems and involves a certain quality of the materials, and  
12 they're a little bit more expensive.

13                   Unfortunately, in that area, too, where we were  
14 seeing some fraudulent activity that was televised as part of  
15 that 60 Minute piece, with that they were using imported  
16 stockings from France that had a label on it that was affixed  
17 that said that it had so much percent of Lycra that would  
18 conform to the standards.

19                   So, we have since been revisiting some of those  
20 standards, looking at ways in which we could stop the misuse of  
21 this.

22                   And certainly, sir, we've also been looking at  
23 the rate, at whether or not this is in conformance with what you  
24 and I, or any reasonable person would see as a price that's  
25 reasonable.

26                   SENATOR LEWIS: The Governor's budget has \$26  
27 million for 265 additional staff for fraud.

28                   If that is adopted, what are your expectations?



1 How are we going to be doing a year from now?

2 DR. BONTA: I expect that we should see a lot  
3 more activity, certainly, in which we have identified the fraud,  
4 been able to do more of our field audits that we've currently  
5 started doing.

6 As you know, the Governor created the Medi-Cal  
7 Provider Fraud Prevention Bureau, and as part of that Bureau,  
8 they have been doing actual more field work.

9 These staff members would enhance and double that  
10 capability out on the street. We'd also be doing more audits.  
11 We would be working extensively on some of the computer programs  
12 that we currently have put more edits in.

13 We'll be continuing to do our efforts on  
14 screening for pre-check right, which is a mechanism where,  
15 before the checks are cut by the Controller's Office, that we do  
16 the edits to see if there are unusual billing patterns.

17 So, I expect that we will continue our efforts.  
18 We will be enhancing our efforts, and that we will see more  
19 prosecutions. We will see a turning around of some of the fraud  
20 that's occurring in the Medi-Cal program.

21 SENATOR LEWIS: Just lastly, I wanted to touch  
22 base would you on an issue that you and I discussed privately  
23 when you came to my office that day, dealing with the  
24 Fountainview Company and the complaints that they have filed,  
25 and the concerns that they have.

26 They have a facility in my district. They seem  
27 to think that they've been singled out for some pretty harsh  
28 treatment from some of the folks in the Department.

1 I understand that you've directed your internal  
2 audits section to investigate the allegations.

3 DR. BONTA: Correct.

4 SENATOR LEWIS: But you also have the latitude to  
5 turn over the investigation to the Attorney General's Office?

6 DR. BONTA: That's correct.

7 SENATOR LEWIS: Why did you choose not to do  
8 that?

9 DR. BONTA: Because we're still doing the  
10 investigation now internally. Certainly, if I feel that we need  
11 the assistance of the Attorney General's Office, we will do so.

12 We've been working very closely with the Attorney  
13 General's Office certainly in the Medi-Cal fraud area and  
14 investigations in other arenas.

15 So, at this point, though, we have initiated the  
16 investigation through Audits and Investigation in the  
17 Department, which is separate from Licensing and Certification.  
18 I feel that there are sufficient controls to be able to  
19 investigate this.

20 SENATOR LEWIS: But the Chief of the Internal  
21 Audits Division, Mr. Macala, said in a letter dated March 17,  
22 "The investigation would not address issues relating to the  
23 survey process and findings," which is really kind of at the  
24 crux of some of their concerns.

25 What's the point?

26 DR. BONTA: The reason that we were not looking  
27 at the survey findings is, in fact, that the facility has  
28 requested a special hearing with HICVA. That is scheduled for

1 June of this year, and that will actually get into the details  
2 of the survey. So, we are not investigating that portion  
3 because that's being handled by the federal government as part  
4 of this review that they have requested as part of their appeal  
5 and as part of the rights of the facility.

6 In addition to that, they had other outstanding  
7 issues which had more to do with a feeling that there were  
8 problems with the staff who conducted the survey, and that is  
9 being handled by Audits and Investigations. So, there are two  
10 issues.

11 CHAIRMAN BURTON: Senator Hughes.

12 SENATOR HUGHES: You've answered most of the  
13 tough questions. Now I'll ask you an easy one. This has to do  
14 so with the federal foster care Medi-Cal extension option.

15 Last year, Congress passed the Foster Care  
16 Independence Act of 1999, which expands the federal funding and  
17 services for foster youth and recently emancipated foster  
18 youth.

19 And the intent of the bill was to improve the  
20 access to health care for youth during the transition from  
21 foster care to adulthood and self-sufficiency. This Act passed  
22 by Congress enables states to extend the Medi-Cal coverage to  
23 former foster care youth to their 22nd birthday.

24 Do you think that this would really help us? And  
25 are you aware of the fact that one of our colleagues has a bill  
26 in now to encourage us to adopt the federal Medicaid eligibility  
27 option?

28 DR. BONTA: Yes, Senator.



1 I think that it's very important for us to be  
2 able to help in the transition, particularly for foster children  
3 as they advance from 18 to their 22nd birthday. This is  
4 something that would be very positive.

5 We have seen from experiences that we've heard  
6 from counties in terms of these young people that, as they're  
7 trying to make their transition, they're trying to be able to  
8 have a job, to get on with their education, to move into usually  
9 housing on their own. And to be able to cover their medical  
10 costs in this area of transition would be very important, and  
11 it'd be something that I'd be supportive of.

12 SENATOR HUGHES: When I interviewed you earlier,  
13 I asked you were you aware of any need to further communicate  
14 with other agencies of state government, because we've become  
15 aware that there are a lot of duplications of services.

16 Are there any particular ones that come to your  
17 mind where you'd like to confer with other agency heads?

18 DR. BONTA: Yes. We've been very fortunate  
19 because in the Health and Human Service Agency under Secretary  
20 Grantland Johnson, he's really fostered communication amongst  
21 all the departments.

22 We've been having a retreat recently. We meet.  
23 We discuss issues together. We're looking at joint projects.

24 In the area of the Governor's initiative on Aging  
25 with Dignity, for instance, it combines both the resources of  
26 the Department of Aging as well as the Department of Health  
27 Services to look at this, very much of an issue.

28 I've been working with Director Mayberg, Steve



1 Mayberg, from Department of Mental Health. Both of us were on a  
2 panel together in Bakersfield. We discussed some of the rural  
3 implications for health as well as for mental health services.

4 This really extends to all of the departments  
5 there.

6 Outside of the agency, we've had communication.  
7 I've been able to have communication with Winston Hickox from  
8 California Environmental Protection Agency, Ed Lowry in that  
9 agency as well.

10 And then with Maria Contreras-Sweet, we've  
11 started some discussion in the housing area, where we'd like to  
12 see some joint projects that we could do, perhaps in lead  
13 abatement or other kinds of areas, where we could discuss the  
14 health implications, actually see some joint, maybe,  
15 applications to the federal government that would combine the  
16 resources of Health and Human Services as well as Housing.

17 SENATOR HUGHES: I'd like to move the nomination.

18 CHAIRMAN BURTON: Senator Knight may have a  
19 piercing question that'll change your mind --

20 SENATOR HUGHES: If he has a piercing question,  
21 I'll change his mind.

22 [Laughter.]

23 SENATOR KNIGHT: Once again I've been out done by  
24 the Senator across the hall there, so I'll relinquish my  
25 time.

26 CHAIRMAN BURTON: A question just briefly.

27 Has the Department recommended any specific  
28 measures to improve the quality of care at the Barstow Veterans'

1 Home?

2 DR. BONTA: Yes. We have been working with the  
3 Department of Veterans Affairs.

4 On our last site visit, which we found the agency  
5 to be in substantial compliance with the federal regulations, we  
6 indicated that there continue to be issues related to  
7 documentation. We've asked them to work on their computer  
8 system, and we're monitoring them on a monthly basis. They must  
9 submit reports to us about this.

10 CHAIRMAN BURTON: How is the Department currently  
11 monitoring compliance with nursing home wage pass-through that  
12 was enacted in last year's budget?

13 DR. BONTA: We will be doing some auditing on  
14 this to ensure. I know that currently, we're also anticipating,  
15 as there are complaints, that we will do the investigations of  
16 the wage pass-through to ensure that the regulations are adhered  
17 to by the nursing home industry.

18 CHAIRMAN BURTON: I would encourage you to do it  
19 before this year's budget, because otherwise, you know, we may  
20 end up reducing the money given the nursing homes if we don't  
21 know that they're passing through, or if they are passing it  
22 through, maybe we'll do better.

23 So, I would encourage you to finish the  
24 monitoring in time for the May revises.

25 Also, just back to that forty percent, that could  
26 include things like just minor skin cancers from the sun, and  
27 stuff like that?

28 DR. BONTA: Yes, sir.

1 CHAIRMAN BURTON: Do you have any family you'd  
2 like to introduce.

3 DR. BONTA: Yes. My husband's here today, Frank  
4 Matricardi.

5 And my daughter is here. She is a senior at UC  
6 Berkeley. She'll be graduating next month, Alicia Matricardi,  
7 and my husband, Frank Matricardi.

8 My two sons were unable to be here. One is a  
9 freshman Loyola Marymount in Los Angeles, and the other is an  
10 attorney in New York City in practice there. He and his wife  
11 and my new grandbaby are back in New York.

12 CHAIRMAN BURTON: Well, congratulations. Thank  
13 you.

14 Witnesses in support briefly, like name, rank and  
15 serial number. And your written statements will be submitted  
16 for the record.

17 Identify yourself. You're in support?

18 MS. KUFFNER: Thank you, Mr. Chairman and Members  
19 of the Committee. I'm Marie Kuffner, a practicing physician  
20 from Los Angeles California.

21 And on behalf of the California Medical  
22 Association, I'm pleased to express our sincere support for  
23 Diana Bonta's appointment for Director of the Department Health  
24 Services. She is extremely well qualified, and we physicians of  
25 the California Medical Association look forward to a long,  
26 fruitful relationship on behalf of our patients and physicians  
27 in California.

28 CHAIRMAN BURTON: Thank you very much.



1                   Next.

2                   MR. MALAN: Mr. Chairman and Members, Justin  
3 Malan, with the Environmental Health Directors.

4                   We encourage your appointment of Dr. Bonta. We  
5 believe that for once we have a champion of public health and  
6 the environmental health. And we know that we'll work well with  
7 her.

8                   Thank you.

9                   MS. CASTELLANO: Carmela Castellano, Chief  
10 Executive Officer of the California Primary Care Association,  
11 representing 500 licensed nonprofit community clinics throughout  
12 the State of California.

13                   It's my pleasure to speak in favor of the  
14 nomination of Dr. Diana Bonta. I've known her for nine years.  
15 She is an outstanding health care leader of the State of  
16 California, representing issues of public health, health systems  
17 knowledge, knowledge of government programs, her experience at  
18 the county level.

19                   And she's a woman of national distinction, given  
20 her leadership role in the American Public Health Association as  
21 well. We'd like to acknowledge, I've personally known her as a  
22 person of individual integrity. She's a problem solver,  
23 consensus builder, strong commitment to her family, the agency  
24 she represents, and entire population of California.

25                   Speak in favor of her nomination. Thank you.

26                   MS. MARTIN: Senator Burton and Members of the  
27 Committee, my name is Denise Martin. I'm the President of the  
28 California Association of Public Hospitals and Health Systems.



1                   We, too, strongly urge your confirmation of Dr.  
2 Bonta for this very, very important position for the State of  
3 California.

4                   I've worked and known Dr. Bonta for a number of  
5 years as part of the overall county health care delivery system  
6 and feel that she is excellently poised to be a champion of  
7 public health and a champion for creating healthy communities  
8 throughout the state.

9                   I just wanted to make one personal reference  
10 about Dr. Bonta. It's that both of us in past lives, we were  
11 emergency room nurses. She was out at Belvue in New York, and I  
12 was at Cook County Hospital in Chicago. And I know through that  
13 a experience that both of us --

14                  CHAIRMAN BURTON: We have a whole lot of people,  
15 a whole lot of stuff. We enjoy your life story and hers.

16                  MS. MARTIN: We're very pleased that she is  
17 recommended, and I think she'll be well poised to take over this  
18 position.

19                  Thank you.

20                  CHAIRMAN BURTON: Thank you.

21                  DR. HINTON: Short and sweet, I'm Dr. Bette  
22 Hinton, the Yolo County Health Officer, and a member of the  
23 Executive Committee of the California Conference of Local Health  
24 Officers.

25                  We are very pleased to have Dr. Bonta, who has  
26 some local experience, at the state level.

27                  MR. NALDOZA: Art Naldoza, La Cooperativa. We're  
28 in support.

1 MR. ARNOLD: Michael Arnold, representing the  
2 California Children's Hospital Association, the California  
3 Dialysis Council, and the California Clinical Laboratory  
4 Association.

5 She is great. She'll do a marvelous job.

6 MR. VALENCIA: Mr. Chairman and Members, John  
7 Valencia, representing both the California Hispanic Chambers of  
8 Commerce and our national organization, the United States  
9 Hispanic Chamber of Commerce.

10 We commend Dr. Bonta's confirmation.

11 MS. COWGER: Terri Cowger on behalf of the  
12 California Children's Lobby and the Hemophilia Council of  
13 California in strong support of Dr. Bonta's confirmation.

14 MR. HITCHCOCK: Doug Hitchcock, representing the  
15 California Healthcare Association.

16 We're pleased to support this nomination.

17 MR. RAMIREZ: Frank Ramirez, representing CAFE de  
18 California and the American GI Forum, in strong support.

19 MS. THOMAS: Terri Thomas, on behalf of the  
20 Women's Appointment Project, which was a bipartisan group of  
21 women's groups throughout the state who came together to try to  
22 identify qualified candidates for positions.

23 Dr. Bonta's truly one of our success stories, and  
24 we recommend her confirmation.

25 MS. TORRES-MONTOYA: Martha Torres-Montoya,  
26 representing the Hispanic Women's Health Association.

27 We would like to commend you select an excellent  
28 candidate for the Director of Health Services.

1 I've known Diana for approximately 26 years in  
2 all capacities and admire her tremendously.

3 Thank you.

4 MS. SCARDACI: Rita Scardaci, Director of Public  
5 Health for Plumas County, and I'm President of the County Health  
6 Executives Association.

7 Your choice is excellent. Dr. Bonta is a person  
8 who is going to be able to bridge the gap between the local  
9 health jurisdictions. She has a unique quality to look right  
10 into the heart of issues, complex issues, and work for  
11 collaborative solutions.

12 Thank you.

13 MR. BAKER: Steve Baker with Aaron Read and  
14 Associates, representing the California Association of  
15 Professional Scientists in support.

16 Thank you.

17 MS. CAPELL: Beth Capell on behalf of the Service  
18 Employees International Union in support.

19 CHAIRMAN BURTON: Any opposition?

20 Moved by Senator Hughes. Call the roll.

21 SECRETARY WEBB: Senator Hughes.

22 SENATOR HUGHES: Aye.

23 SECRETARY WEBB: Hughes Aye. Senator Knight.

24 SENATOR KNIGHT: Aye.

25 SECRETARY WEBB: Knight Aye. Senator Lewis.

26 SENATOR LEWIS: Aye.

27 SECRETARY WEBB: Lewis Aye. Senator Burton.

28 CHAIRMAN BURTON: Aye.



1 SECRETARY WEBB: Burton Aye. Four to zero.

2 CHAIRMAN BURTON: Aye. Hold the roll open for  
3 Senator O'Connell.

4 Congratulations.

5 DR. BONTA: Thank you.

6 [Thereupon the Senate Rules  
7 Committee acted on legislative  
8 agenda items.]

9 CHAIRMAN BURTON: Sheryl Granzella, front and  
10 center.

11 MS. GRANZELLA: Yes, sir.

12 CHAIRMAN BURTON: I would like to introduce my  
13 good friend, Sheryl Granzella, and you may open.

14 MS. GRANZELLA: Senator Burton, Members of the  
15 Senate Rules Committee, my name is Sheryl Granzella.

16 I am honored and humbled that Governor Gray Davis  
17 has recommended me to be a Member of the California Horse Racing  
18 Board.

19 I'm a lifelong resident of west Contra Costa  
20 County. I am employed, as well as my entire immediate family,  
21 with the Richmond Sanitary Service in Richmond. We're a  
22 privately held solid waste removal company, and we have been  
23 providing refuse services to west Contra Costa County and Solano  
24 County for more than 80 years.

25 My father, Richard Granzella, who I'm pleased is  
26 here with me today, has been President of Richmond Sanitary  
27 Service for 41 years, and we work very closely together.

28 My primary focus at Richmond Sanitary Service is



1 providing and maintaining superior customer service for my  
2 customers. I see the same responsibility as a Member of the  
3 California Horse Racing Board as a Commissioner, protecting the  
4 industry and protecting the interest of the public, making sure  
5 that when a person makes two dollar bet, he's getting an honest  
6 game, and he's going to get his money's worth. So, in other  
7 words, it's just another form of superior customer service.

8 By no means am I an expert on horse racing, but  
9 I'm willing to learn everything that I can, and I want to be an  
10 active participant on the Board. I hope to bring to the job my  
11 skills and experience from working at Richmond Sanitary and  
12 serving on many other boards and commissions in my immediate  
13 area.

14 I try to listen to all -- I do listen to all  
15 sides and consider myself to be analytical and quite fair in  
16 controversial dealings. I am more than willing to work with  
17 staff and all of you in order to fulfill the mission of the  
18 Board and uphold the horse racing laws.

19 So, I'm very pleased and honored to be here  
20 today, and hope that you confirm my status as a California Horse  
21 Racing Board Member.

22 Thank you.

23 CHAIRMAN BURTON: Senator Lewis.

24 SENATOR LEWIS: No questions.

25 CHAIRMAN BURTON: Senator Knight.

26 SENATOR KNIGHT: I'm just curious. The horse  
27 racing industry is a very significant industry. It's a very  
28 significant industry within California. Very few people are

1 aware of it. In fact, gambling has been taken over by other  
2 forms of gambling with the Lotto and the Indian casinos now.

3 What do you plan to do to upgrade the industry of  
4 horse racing to make people aware of it, and to get people  
5 interested in that industry again?

6 MS. GRANZELLA: Well, I do know that there's a  
7 whole marketing plan out there trying because of -- trying to  
8 attract new people -- or attract people to the track. Attract  
9 people to the track, to the horse track.

10 And with the passage of 1-A, we're hoping that  
11 maybe we get the casinos and the tracks to get together and have  
12 simulcast racing in the casinos to attract more people to horse  
13 racing.

14 But the average age, I guess, of the people  
15 attending the racing is declining, so they have to market  
16 themselves in a completely different way to attract new  
17 customers.

18 SENATOR KNIGHT: Okay.

19 CHAIRMAN BURTON: Just one thing. Labrook owns  
20 the San Pablo Casino. Is that San Pablo or El Cerrito?

21 MS. GRANZELLA: San Pablo.

22 CHAIRMAN BURTON: Now they want to either sell  
23 that, lease that, or join it out with a tribe.

24 MS. GRANZELLA: Correct.

25 CHAIRMAN BURTON: Does the fact that Labrook's  
26 licensed by the Racing Board, have you got any say in that, up,  
27 down or sideways?

28 MS. GRANZELLA: I can't answer that question.

1 CHAIRMAN BURTON: Does anybody know that?

2 FROM THE AUDIENCE: Labrook is no longer licensed  
3 by the California Horse Racing Board. Golden Gate Fields was  
4 purchased by Magna.

5 CHAIRMAN BURTON: So, that's just kind of  
6 curiosity. That actually was one of the concerns that people  
7 had during the whole Indian thing, was ending up, some tribe  
8 moving in there.

9 I'll move the nomination.

10 You introduced Rich.

11 MS. GRANZELLA: I'd like to introduce my father,  
12 Richard Granzella, and my daughter, Carla Peralta. They're here  
13 with me today.

14 CHAIRMAN BURTON: And Uncle Lenny.

15 MS. GRANZELLA: Uncle Lenny Stefanelli.

16 CHAIRMAN BURTON: And Cousin George Miller's not  
17 here. But Burt would be very proud.

18 MS. GRANZELLA: Yes, he would. I miss Burt.

19 CHAIRMAN BURTON: Witness in support.

20 MS. MUIR: Linda Muir on behalf of Los Angeles  
21 Turf Club at Santa Anita.

22 I've known Sheryl for a very long time. And I'd  
23 like to comment on the timeliness of this hearing in Rules, on  
24 the Monday after the Saturday running of the million dollar  
25 Santa Anita Derby, which, for the first time, was won by a horse  
26 trained by a woman trainer.

27 We are moving women into racing, and it's about  
28 time.



1                   And I enthusiastically support Sheryl's  
2 appointment.

3                   CHAIRMAN BURTON: They had a great article about  
4 her in the Times sport section. I remember when it was only a  
5 hundred thousand dollar purse. Now it's a million. Tracks must  
6 be doing good.

7                   Any witnesses in opposition?

8                   Call the roll.

9                   SECRETARY WEBB: Senator Hughes. Senator Knight.

10                  SENATOR KNIGHT: Aye.

11                  SECRETARY WEBB: Knight Aye. Senator O'Connell.  
12 Senator Lewis.

13                  SENATOR LEWIS: Aye.

14                  SECRETARY WEBB: Lewis Aye. Senator Burton.

15                  CHAIRMAN BURTON: Aye.

16                  We'll hold the roll open.

17                  Sheryl, thank you and congratulations.

18                         [Thereafter, SENATOR HUGHES

19                         added her Aye vote, making

20                         the final vote 4-0 for

21                         confirmation.]

22                  CHAIRMAN BURTON: Marie Moretti.

23                  MS. MORETTI: Good afternoon, Senator Burton,  
24 Senators. My name is Marie Moretti, and I come before you today  
25 seeking confirmation to the California Horse Racing Board.

26                         My background is communications, public  
27 relations, public affairs work.

28                         And just as a follow-up to your previous comments



1 to Ms. Granzella, I, in my public relations background, did work  
2 on and pitched a story on women in horse racing that ran a cover  
3 story a few years ago. So, I'd be happy to send that to you,  
4 sir.

5 My experience with horse racing began as  
6 spectator in the early '70s. Since that time, I've had an  
7 opportunity to learn about horse racing, not just as a sport or  
8 entertainment, but as an important revenue-producing California  
9 agri-business.

10 My background in public affairs and public  
11 relations, I believe, provides me with a good understanding not  
12 only of the political process, but of communications. I believe  
13 both are assets to a state board that regulates what can be a  
14 very complex and multi-faceted industry.

15 I believe this is a time of great challenge and  
16 opportunity for the horse racing industry. Until a couple of  
17 years ago, the industry was plagued with the highest licensing  
18 fees in the country. The passage of SB 27 brought California  
19 horse racing to a more equitable level with other key racing  
20 states.

21 The charge that we have from now on is  
22 formidable. The Cal-bred program, which was sanctioned by that  
23 legislation, and a marketing program that was begun, will  
24 complement a national marketing program that was established  
25 recently by the NTRA, which is the National Thoroughbred Racing  
26 Association.

27 As I said, I believe there are many opportunities  
28 and a number of challenges confronting the industry. It is my

1 intention if confirmed as a commissioner to promote those  
2 opportunities and to meet the challenges to the best of my  
3 ability.

4 Thank you.

5 CHAIRMAN BURTON: Senator Lewis.

6 SENATOR LEWIS: No questions.

7 CHAIRMAN BURTON: Senator Knight.

8 SENATOR KNIGHT: One comment. You're all  
9 enthralled with a lady trainer of recent time.

10 I would like to suggest that in 1946 and '47,  
11 when I was on the track, we had women jockeys. So, you know,  
12 you're all behind the times.

13 MS. MORETTI: We still have a number of women  
14 jockeys. Not as many in California as they do back east,  
15 unfortunately.

16 CHAIRMAN BURTON: Robyn Smith.

17 I move the nomination.

18 Any witnesses? Do you have anyone you want to  
19 introduce. Not here.

20 Witnesses in opposition? Hearing none, call the  
21 roll.

22 SECRETARY WEBB: Senator Knight.

23 SENATOR KNIGHT: Aye.

24 SECRETARY WEBB: Knight Aye. Senator Lewis.

25 SENATOR LEWIS: Aye.

26 SECRETARY WEBB: Lewis Aye. Senator Burton.

27 CHAIRMAN BURTON: Aye.

28 SECRETARY WEBB: Burton Aye.

1 CHAIRMAN BURTON: Aye. Hold the roll open.  
2 Congratulations, Marie.

3 MS. MORETTI: Thank you.

4 [Thereafter, SENATOR HUGHES  
5 added her Aye vote, making  
6 the final vote 4-0 for  
7 confirmation.]

8 [Thereupon this portion of the  
9 Senate Rules Committee hearing was  
10 terminated at approximately 2:25 P.M.]

11 --ooOoo--  
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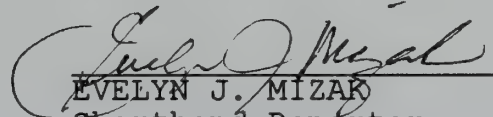
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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 11<sup>th</sup> day of April, 2000.

  
EVELYN J. MIZAK  
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APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR JOE BACA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

SENATOR JACK O'CONNELL

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

CHRIS BURNS, Consultant to SENATOR KNIGHT

ALSO PRESENT

MARK A. BOSETTI, Member  
State Board of Forestry and Fire Protection

SENATOR BYRON SHER

SENATOR DEBRA BOWEN

STAN L. DIXON, Member  
State Board of Forestry and Fire Protection

SENATOR WES CHESBRO

ROBERT C. HEALD, Member  
State Board of Forestry and Fire Protection

ANDREW "KIRK" MARCKWALD, Member  
State Board of Forestry and Fire Protection





1 LORETTA M. LYNCH, Member  
2 Public Utilities Commission

3 JOHN WHITE  
4 Center for Energy Efficiency and Renewable Technologies

5 JAN SMUTNY-JONES  
6 Independent Energy Producers

7 ART CARTER  
8 California Pipe Trades Council  
9 State Association of Electrical Workers  
10 Sheet Metal Workers Union

11 BOB BALGENORTH  
12 State Building Trades Council

13 MICHAEL MONAGAN  
14 Calpine Corporation

15 CARL W. WOOD, Member  
16 Public Utilities Commission

17 SENATOR JACKIE SPEIER

18 JIM KELLOGG  
19 Pipe Trades Council  
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Gubernatorial appointees appearing today, Mark Bosetti, Member, State Board of Forestry and Fire Protection.

MR. BOSETTI: Chairman Burton, distinguished Members of the Rules Committee, my name is Mark Bosetti. I've been appointed by Governor Davis to fill the forest industry seat on the State Board of Forestry and Fire Protection.

I'm a registered professional forester and bring to the Board 18 years of experience working in the interior forests of northern California. My expertise is in timber evaluation and raw material acquisition.

I'm currently employed as Division Timber Manager for Sierra Pacific Industries in Berney. As Division Timber Manager, I have responsibility for acquisition of logs and timber from both industrial and non-industrial forest landowners.

My interaction with landowners that are preparing to bring their timber to market provides me with the perspective on how landowners view and incorporate regulatory mandates into their forest management decisions. I believe that this perspective can be of value to the Board.

Our state's population growth has increased the demand placed on our forested landscapes to provide wood fiber, clean water, open space and habitat for fish and wildlife. As these demands have increased, so has the controversy over how California's privately owned forests should be managed. This

1 controversy has led to increased uncertainty for forest  
2 landowners and has caused significant restructuring of forest  
3 ownership over the past two decades.

4 If confirmed, I will work to shape policy and  
5 regulations that do three things.

6 One, recognize the diversity of forests to which  
7 policy and regulations will apply by relying on site specific  
8 prescriptions and mitigations to accomplish forest management  
9 goals.

10 Two is, provide Californians assurance through  
11 enforcement and review that forest management activities are in  
12 compliance with all applicable environmental laws.

13 And three is to encourage forest landowners to  
14 maintain their commitment of capital to forest management.

15 Questions?

16 CHAIRMAN BURTON: I think that Senator Sher, who  
17 is Chair of both the policy and the budget committee, wanted to  
18 come before the Committee and make a statement in lieu of  
19 bringing all of you before the budget committee in the budget  
20 hearings. So, Senator Sher.

21 SENATOR SHER: Thank you, Mr. Chair and Members  
22 of the Committee for the opportunity just to say a few general  
23 words concerning the Board of Forestry as part of today's  
24 confirmation hearing for four of the Governor's appointments to  
25 the Board.

26 I want to make clear that I'm not here today to  
27 take a position one way or another on the individual nominees.  
28 I have said I've had the opportunity to work with some of them,

1 particularly Mr. Kirk Marckwald, who you'll be hearing from, and  
2 found him, as I'm sure the other members are, to be capable and  
3 thoughtful additions to the Board.

4 But I am here today to ask that the Rules  
5 Committee determine whether these appointees are committed to  
6 follow through on the initial but temporary first step they took  
7 earlier this year to strengthen the forest practices rules to  
8 protect our forests and aquatic habitat before the Legislature  
9 adjourns at the end of August.

10 Specifically, I would hope that the Committee  
11 could inquire whether the Board members will act sooner than  
12 next fall to revisit, and strengthen, and make permanent its new  
13 forest practices rules designed to address concerns over  
14 destruction of salmon and their habitat.

15 As you know, after years of inaction and repeated  
16 urging by some of us in the Legislature, the Board of Forestry  
17 finally, last month, did approve some new prescriptions for  
18 logging practices. However, many experts believe that the rules  
19 are not adequate to protect salmon or their habitat. But most  
20 importantly and inexplicably, the rules are designed to sunset  
21 at the end of the year, which will thereby eliminate even the  
22 modest new protection afforded by these rules and revert the law  
23 to the status quo.

24 So, my point is that we ought to try to see  
25 action in the Board before the Legislature goes out of session  
26 at the end of August.

27 In fact, we all ought to be working together  
28 while the session is still going to do all that we can to enact



1 a package of actions which will help restore and protect the  
2 north coast fisheries, provide state funding incentives to  
3 watershed assessment activities, and to have in place strong  
4 interim prescriptions on water courses to ensure protection of  
5 the salmon, and not see what's on the books now go out of effect  
6 on January 1st of next year. That way, the Legislature will be  
7 included in the process. We'll have an opportunity to be a part  
8 of this process and not have this final action or inaction occur  
9 after we're out of session.

10 I thank you for your consideration.

11 CHAIRMAN BURTON: Thank you.

12 Senator Bowen.

13 SENATOR BOWEN: Thank you, Senator Burton and  
14 Members.

15 I just wanted to take 30 seconds to say that I  
16 agree with the concerns just expressed by Senator Sher. I want  
17 to make sure that the Legislature gets a chance to express its  
18 vision for this particular Board.

19 CHAIRMAN BURTON: The concern, and I think all of  
20 the appointees should be prepared to discuss, is that a long  
21 time after doing nothing, the Board did something, okay. That  
22 something, in the view of many, including National Marine  
23 Fisheries Service, doesn't take it a long way enough to protect  
24 the salmon. But when that sunsets, everything's off.

25 So, the question is, and I know you're just one  
26 member of the Board, but, you know, at least this Member is  
27 looking for a commitment that the Board now work on a package of  
28 actions to do the best they can to help restore and protect the

1 north coast fisheries, and do something about the situation  
2 before we get out of here.

3           You've got a couple of problems. If you do  
4 nothing, then nothing happens. If you don't do enough, there'll  
5 be some problems with the salmon. And if you don't do enough,  
6 there will be a problem with your budget next year. So, it's  
7 kind of everybody's got a problem if nothing happens.

8           MR. BOSETTI: Certainly.

9           With regard to the question about commitment to  
10 following through with a rule package that would implement more  
11 stringent or a permanent solution to the issue of salmon  
12 recovery and habitat, I think I, for one, am committed to  
13 working as hard as I can and as diligently to move in that  
14 direction.

15           Part of the proposal that is out before the Board  
16 is to come up with a watershed-based analysis to help address  
17 specific issues relative to anadidymus salmonid habitat stream  
18 conditions, and I think that is where a lot of effort needs to  
19 be placed.

20           The package that was approved as an interim guide  
21 applies to a far -- more far reaching area than the scientific  
22 review panel's initial emphasis was for recovery of salmon  
23 habitat.

24           There are some conditions that exist on more of  
25 the interior reaches of salmon streams that aren't -- don't  
26 exhibit the same characters as they do on the coast. Canopy  
27 closures are much different. Species compositions are much  
28 different. Feed water sources, whether it's interior, more snow

1 run-off, those type of things are variable, and we need to have  
2 measures that are in place that address site-specific issues,  
3 that put these things on recovery, on a trajectory of recovery,  
4 as quickly and as fast as we can.

5 But yes, I am committed to trying to follow  
6 through and make good on a package before the end of the year.  
7 And then I need to follow-up with, you know, what I'm learning  
8 about the regulatory climate and the speed with which things  
9 move, it's a little unsettling there, you know. You have pretty  
10 tight timelines to make sure that rules packages are reviewed  
11 before the OAL and can get implemented. So, we have that time  
12 clock ticking as well.

13 Regarding the sunset, I think there are options  
14 open to the Board to ensure that the package that's in place, if  
15 it were to reach the period of sunset and a follow-up package  
16 was not in place, or in a condition of being in place, we could  
17 probably, my understanding is, vote to extend that, the  
18 provision, the rule provision.

19 CHAIRMAN BURTON: Yeah, you can. That's  
20 absolutely right.

21 But I don't think people are that happy with the  
22 interim regs and wouldn't look too kindly upon just consistently  
23 extending the deadline. I think I understood the reason,  
24 probably, why you did what you did, given new members, given  
25 there're still, I think, several vacancies on the Board. And  
26 you've got a mix of Wilson people, Davis people. So, probably  
27 the easiest and least contentious thing for the Board to do was  
28 to do what you did.



1 But many of us view that as like a stopgap deal  
2 until you do something. But the point that I'm making is that  
3 we're looking forward to stuff being done, and to know kind of  
4 what's going on, one, before we get out of here for our recess,  
5 and two, that -- again, speaking for myself when I was a Budget  
6 Committee Chair, Subcommittee Chair -- sometimes I saw no reason  
7 to spend taxpayers' money on boards and commissions and  
8 departments that I figured, if they weren't there, everything  
9 would be the same.

10 And I'm just a piece of cake compared to Senator  
11 Sher and the people on his subcommittee, as I found out on one  
12 of my bills earlier today. Where were you when I needed you,  
13 Pete.

14 [Laughter.]

15 CHAIRMAN BURTON: Senator Lewis.

16 SENATOR LEWIS: No questions.

17 CHAIRMAN BURTON: Senator Hughes.

18 SENATOR HUGHES: No questions.

19 CHAIRMAN BURTON: Senator Knight.

20 SENATOR KNIGHT: Yes, I've got a question.

21 Considering your experience in forestry and fire  
22 fighting, and I don't know much about that. The only thing I  
23 know is, you don't drink downstream of the herd.

24 But what other programs can you institute that  
25 would support the habitat, the salmon, other than eliminating  
26 forestry, or preventing fires, eliminating harvesting? What  
27 other programs can you do?

28 MR. BOSETTI: Well, I think, if I understand the



1 question, the whole process of recovery of salmonid habitat with  
2 regard to forest practices and timber harvesting is wound into a  
3 means of looking at entire watershed conditions: stream course  
4 crossings, things that we can be doing or removing, or upgrading  
5 culverts that are impeding the progress of salmon to their  
6 spawning habitats, designing roads that more adequately  
7 channel --

8                   SENATOR KNIGHT: Is that within your  
9 responsibility?

10                   MR. BOSETTI: Yes, it is. I think developing of  
11 policy and regulations that address the key elements that  
12 impact --

13                   SENATOR KNIGHT: To evaluate the impediments to  
14 the salmon moving upstream, and to then recommend that we either  
15 build a new road, build bridges and build culverts, or whatever?

16                   MR. BOSETTI: I think the Board, its purview is  
17 to take consideration from the various agencies that provide  
18 input -- the Department of Fish and Game, Water Quality,  
19 California Department of Forestry -- and then promulgate  
20 regulations or policy that addresses those issues that have been  
21 brought to light by the supporting agencies.

22                   As far as fire protection or issues regarding  
23 fuel loading, certainly that all is incorporated into -- did I  
24 miss the point of the question?

25                   SENATOR KNIGHT: No, I was just wondering what  
26 other programs that you could envision instituting that would  
27 support your directive or your charter.

28                   MR. BOSETTI: I think one of the key things

1 regarding how we get started is a baseline or an idea of what  
2 are the conditions that exist out there in the forest. I know  
3 they vary from drainage to drainage, stream course to stream  
4 course. But through a watershed based approach, you can have a  
5 planning watershed evaluated for the key elements that are  
6 impacting whatever species of fish it may happen to be, whether  
7 it's steelhead or whether it's a coho salmon. And by virtue of  
8 identifying the issues that are limiting their progress or  
9 existence, you can then develop some site-specific measures to  
10 correct or improve the condition of that habitat.

11 SENATOR KNIGHT: Okay.

12 CHAIRMAN BURTON: Fish, like young kids in high  
13 school, kind of like to make out when it's dark.

14 SENATOR HUGHES: Move.

15 CHAIRMAN BURTON: Moved by Senator Hughes.

16 Witnesses in support, please. Witnesses in  
17 opposition.

18 Do you have family here?

19 MR. BOSETTI: Yes, my wife's here with me  
20 today.

21 CHAIRMAN BURTON: Why don't you introduce her.

22 MR. BOSETTI: This is my wife, Sandy. I needed  
23 at least one character witness.

24 [Laughter.]

25 CHAIRMAN BURTON: That's good, but trust me.  
26 None are better than a lot.

27 Moved by Senator Hughes. Call the roll.

28 SECRETARY WEBB: Senator Hughes.

1 SENATOR HUGHES: Aye.

2 SECRETARY WEBB: Hughes Aye. Senator Knight.

3 SENATOR KNIGHT: Aye.

4 SECRETARY WEBB: Knight Aye. Senator O'Connell.

5 SENATOR O'CONNELL: Aye.

6 SECRETARY WEBB: O'Connell Aye. Senator Burton.

7 CHAIRMAN BURTON: Aye.

8 SECRETARY WEBB: Burton Aye. Four to zero.

9 [Thereafter, SENATOR LEWIS

10 his Aye vote, thus making the

11 final vote 5-0 for confirmation.]

12 CHAIRMAN BURTON: Thank you, sir.

13 Congratulations.

14 MR. BOSETTI: Thank you very much.

15 CHAIRMAN BURTON: Next is Stan Dixon.

16 Senator Chesbro.

17 SENATOR CHESBRO: Mr. Chairman and Members, it  
18 gives me a great deal of pleasure to introduce my friend and  
19 former colleague, Stan Dixon. I served for number of years on  
20 the Humboldt County Board of Supervisors with Stan, and I  
21 believe he's an excellent nominee for this position for  
22 confirmation. I would encourage your positive vote.

23 Stan gets along, and listens, and works well with  
24 a variety of constituencies which, on this Board, is an absolute  
25 essential quality. He is both someone who cares a lot about the  
26 environment, but also understands very well the importance of  
27 having a timber economy in a county like one that we both come  
28 from, Humboldt, where many people depend on the forest practices



1 industry for their jobs. And that's a tough balancing process,  
2 and the Board of Forestry is where those difficult decisions  
3 come into play.

4 I also know he's very committed, has worked very  
5 hard, for the restoration of our fisheries on the north coast.  
6 He's been a leader among County Supervisors in northwestern  
7 California in the whole area of fisheries restoration, and he  
8 understands that there's a strong interconnection between what  
9 happens on the land and what happens in the streams to the  
10 fish.

11 Finally, I'd just like to say that he's very much  
12 a bipartisan person. He and I -- I was the only Democrat on the  
13 Board for quite a few years, but Stan came along and there was  
14 another Democrat on the Board. But he represented, both as  
15 Mayor for a number of years of the City of Ferndale, and then on  
16 the Humboldt County Board of Supervisors, I think the most  
17 Republican part of the county by far. And I think that is  
18 reflective of the fact that he is somebody who really puts  
19 thoughtful policy, and bringing people together, and  
20 communication first, ahead of partisan or ideological  
21 considerations.

22 I think he will do an excellent job, has been  
23 doing an excellent job on the Board. And it gives me pleasure  
24 to introduce him and offer my full support to his confirmation.

25 CHAIRMAN BURTON: Thank you, Senator.

26 MR. DIXON: Mr. Chairman, Senators, first of all,  
27 I want to thank my good friend and former colleague on the Board  
28 of Supervisors, Senator Chesbro. And to thank this Committee



1 for affording us the opportunity to appear here before you this  
2 afternoon.

3 Much of what I would have said in a very brief  
4 introductory statement, Senator Chesbro has relayed to you  
5 already.

6 My background is essentially local government. I  
7 served for 12 years on the Humboldt County Board of Supervisors.  
8 I served 16 years as a Mayor and City Councilman for the City of  
9 Ferndale, a small city in northern California. I also served 8  
10 years as a member of the Ferndale Union High School Board of  
11 Education.

12 Obviously, I think that I can bring a perspective  
13 to the Board representative of many northern rural counties who  
14 are resource based. As Wes said, Humboldt County has a very  
15 dependent base with forestry and with fishing. Those issues are  
16 very inter-related on the north coast.

17 I have had the opportunity, representing my  
18 board, to be assigned to the SMARA subcommittee, which deals  
19 with gravel mining in river, primarily on the north coast.

20 I've also served as one of my board's  
21 representatives to the North Coast Five County Conservation --  
22 Coho Conservation Planning Unit. And we've worked diligently  
23 with the Secretary of Resources and Department of Fish and Game  
24 to help bring federal money to the State of California, and to  
25 apply that money to the restoration of salmon and salmonid  
26 habitat up and down the coast.

27 Having said that, Mr. Chairman, I would be happy  
28 to answer questions.

1 CHAIRMAN BURTON: Thank you, Senator Chesbro.

2 Could you comment on the earlier questions that  
3 were posed to the previous appointee?

4 MR. DIXON: As it relates to the question about  
5 the rules, the interim rules package sunseting on January 1st,  
6 Senator, I think that the members of the Board have expressed  
7 over the past several meetings that they certainly would be  
8 willing to revisit that package to make sure that, if the  
9 watershed analysis rules are not ready and not implemented, I  
10 think we would have to have those out by the middle of July to  
11 get that package effective by January 1st.

12 But I think that the Members of the Board would  
13 be willing, certainly, to revisit the sunset of the interim  
14 rules and even consider going back to the agency package that  
15 was before us before the interim rules were adopted.

16 CHAIRMAN BURTON: Well, they're certainly going  
17 to have consider at least the sunset, or they're going to end up  
18 with nothing; right?

19 MR. DIXON: Oh, absolutely. I think that there  
20 is the possibility that we can bring forward the watershed  
21 analysis program, which is what I believe National Marine  
22 Fisheries has indicated is the ultimate resolution to this  
23 problem.

24 There are many -- it is a complex issue, and  
25 there are many problems associated with it, not the least of  
26 which is the administrative problem and the time problem.

27 But I can assure you, Senator, as one member of  
28 the Board, that certainly we would revisit at least the interim

1 rules, and hopefully even the full agency package.

2 CHAIRMAN BURTON: How intransigent -- I guess  
3 that's the word -- do you find the industry to any regulation  
4 that's going to inhibit their ability to make a buck? They're  
5 not in business to save fish. They're in business to basically  
6 cut down trees.

7 Do you find some of the companies are better than  
8 others, or at least different from others?

9 MR. DIXON: There clearly are leaders in the  
10 industry that have taken advanced steps to bring their  
11 harvesting operations not only into compliance, but to be  
12 precedent setting in the way they do business in the forests of  
13 Northern California.

14 There are those, obviously, that have been  
15 violators. And I think that there have been certain things put  
16 in place, one being Senate Bill 621, which allowed for civil  
17 penalties to be assessed against violators.

18 There are other rules packages moving forward  
19 before the Board right now which would strengthen the role of  
20 registered professional foresters in the administration of  
21 timber harvest plans.

22 But for the most part, I believe -- I lived in  
23 Humboldt County in the 1950s, when logging was pretty much a  
24 hit-and-run kind of an operation. They dragged logs down  
25 salmonid streams and had very little sense of responsibility for  
26 the fish and for the rest of the environment.

27 That has changed dramatically. Most of the  
28 companies are not only responsible, but exceed the standards



1 that we have.

2 But the object, of course, is that there are  
3 species of fish that are faced with extinction and that may  
4 require that prescriptions get tougher. And I believe the way  
5 to do that is through this watershed analysis and the resolution  
6 of the issue of cumulative impacts on watersheds.

7 CHAIRMAN BURTON: Senator Knight.

8 SENATOR KNIGHT: I'll ask the same question I did  
9 before.

10 By the way, do you think about drinking upstream  
11 of the herd?

12 MR. DIXON: I certainly do, Senator.

13 SENATOR KNIGHT: I just wondered. Nobody else  
14 laughed before.

15 CHAIRMAN BURTON: I didn't hear you, Pete.

16 SENATOR KNIGHT: Oh, didn't you?

17 What other plans are there available to  
18 rejuvenate the salmon, or the fish, or whatever species are in  
19 the rivers, other than logging restrictions, or clear cutting  
20 restrictions, or whatever, or controlling forest fires?

21 MR. DIXON: There are -- obviously, timber  
22 harvesting is not the only impact on salmonid streams and rivers  
23 in any part of the state.

24 Counties, as a matter of fact, have been one of  
25 the worst violators in their poor construction of bridges, and  
26 culverts, and their road constructions, which have been  
27 responsible for depositing sediment in streams and doing the  
28 same thing that timber harvest practices have done.



1                   SENATOR KNIGHT: But again, isn't that a  
2 responsibility of Fish and Game?

3                   MR. DIXON: Well, it's a responsibility of  
4 counties. And we are doing something about that. We have  
5 learned that we are violators, and that we're learning to  
6 inventory our roads, to assess our culverts that are barriers to  
7 fish passage, and we're doing something about replacing those.

8                   Urban development is problem that is equal to  
9 timber harvesting.

10                  SENATOR KNIGHT: Is all of that within your  
11 responsibility?

12                  MR. DIXON: No.

13                  SENATOR KNIGHT: So, what you're saying is, the  
14 additional plans or the additional programs are working with  
15 other organizations?

16                  MR. DIXON: I think to win the battle to save  
17 fish requires the inter-relationship and cooperation of all  
18 kinds of agencies and the private sector as well, not just the  
19 timber industry.

20                  CHAIRMAN BURTON: Senator Hughes.

21                  SENATOR HUGHES: Yes, I was looking at the time  
22 that you were appointed, July 27th of '99. It's been not quite  
23 a year.

24                  What have you learned? I know you do a lot as a  
25 county supervisor, but what you have learned with serving on  
26 this Department that gives you some direction now in all of  
27 these months that you've been there? What kind of leadership  
28 are you ready to provide?

1 MR. DIXON: Senator, one of the most important  
2 things that I've had the opportunity to participate in as a  
3 member of the Board of Forestry is the public hearing process on  
4 these many rule packages that have come before the Board. And  
5 it's very clear that almost everybody believes that the most  
6 important step the Board can take is to establish this watershed  
7 analysis program. That one-size with these kind of rules just  
8 does not fit every situation.

9 So, I think that to move forward and establish  
10 programs that deal with individual watersheds, and prescribe  
11 rules for those particular needs, those particular sites, taking  
12 into consideration cumulative impacts, is the way to go.

13 That probably is the singularly most important  
14 thing that I've learned in this process.

15 SENATOR HUGHES: Have you said this in Board  
16 meetings, or are you just coming up with this conclusive  
17 suggestion at this point in time?

18 MR. DIXON: I would expect that I had probably  
19 said that somewhere in this process, yeah.

20 SENATOR HUGHES: Then, if they didn't listen to  
21 you, what are you going to do?

22 MR. DIXON: I think that you work with the  
23 members on the Board, and with the Department, CDF, to bring  
24 that forward. And I think that's happening.

25 It hasn't been a situation where people aren't  
26 listening.

27 And I certainly didn't mean to imply that I was  
28 the first or the only one to support watershed analysis. But I

1 think it will happen, and I think we'll be effective.

2 SENATOR HUGHES: Thank you.

3 Move.

4 CHAIRMAN BURTON: Moved by Senator Hughes.

5 Witnesses in support. Witnesses in opposition.

6 Family?

7 MR. DIXON: Senator, my wife is a school teacher,  
8 and she was unable to make it today.

9 CHAIRMAN BURTON: You and Chesbro, huh.

10 What did you get paid on the Humboldt County  
11 Board? What's the salary of a Supervisor on the Humboldt Board?

12 MR. DIXON: About 50,000 a year.

13 CHAIRMAN BURTON: San Francisco's got to have the  
14 worst. They get 28,000 and they deal with God knows what.  
15 That's why we're here.

16 SENATOR HUGHES: Can we move it again, please.

17 CHAIRMAN BURTON: Call the roll, please.

18 SECRETARY WEBB: Senator Hughes.

19 SENATOR HUGHES: Aye.

20 SECRETARY WEBB: Hughes Aye. Senator Knight.

21 SENATOR KNIGHT: Aye.

22 SECRETARY WEBB: Knight Aye. Senator O'Connell.

23 SENATOR O'CONNELL: Aye.

24 SECRETARY WEBB: O'Connell Aye. Senator Burton.

25 CHAIRMAN BURTON: Aye.

26 SECRETARY WEBB: Burton Aye. Four to zero.

27 [Thereafter, SENATOR LEWIS

28 his Aye vote, thus making the



1 final vote 5-0 for confirmation.]

2 CHAIRMAN BURTON: Congratulations.

3 MR. DIXON: Thank you, Mr. Chairman.

4 CHAIRMAN BURTON: Robert Heald. Good afternoon,  
5 sir.

6 MR. HEALD: Good afternoon, Chairman Burton,  
7 Members of the Committee. Thank you very much for the  
8 opportunity to appear here.

9 My name is Bob Heald. I'm a registered  
10 professional forester. I have 27 years of experience in  
11 research and teaching on forest resources. I'm currently the  
12 Director of the Center for Forestry at the College of Natural  
13 Resources at the University of California at Berkeley. I have a  
14 Master's Degree and a Bachelor's Degree in forestry from UC  
15 Berkeley.

16 I previously have been elected as a director for  
17 a local school district, a K-12 district, twice, and as a fire  
18 board member twice in our local area in El Dorado County.

19 It's a privilege to be here. I've been  
20 reappointed by Governor Davis to this position, and I look  
21 forward to working as hard as I can to move forward in the  
22 future.

23 I'd be pleased to answer any questions that you  
24 have.

25 CHAIRMAN BURTON: What is a forester?

26 MR. HEALD: A forester is a person in California  
27 who is actually registered by the State of California. It  
28 requires a combination of either four years of a Bachelor's



1 Degree from the University of California, and three years of  
2 experience, and then passing a fairly difficult examination to  
3 be licensed by the state.

4 CHAIRMAN BURTON: To do what?

5 MR. HEALD: Foresters are trained to manage  
6 forest resources, natural resources. They cover a very broad  
7 range of activities.

8 CHAIRMAN BURTON: It's an old profession?

9 MR. HEALD: Yes, in this country, from Gifford  
10 Pinchot from late turn of the century.

11 Many foresters are involved in activities that  
12 are completely unrelated to growing and harvesting of trees.  
13 They manage watersheds, deal with fire issues, a very broad  
14 range of activities.

15 CHAIRMAN BURTON: And then the Independent Order  
16 of Foresters, do you have to be a forester to be in that?

17 MR. HEALD: That's a different association  
18 entirely. It has nothing to do the profession.

19 CHAIRMAN BURTON: They're just people who're kind  
20 of dedicated --

21 MR. HEALD: It's a civic organization.

22 CHAIRMAN BURTON: -- to trees and stuff.

23 The questions that were asked of the earlier  
24 ones, and I don't want to deal with the temporaries, because the  
25 temporaries have been done, but about to immediately get the  
26 Board focusing on basically what the permanent regs are going to  
27 be, and hopefully strengthening the temporaries.

28 Do you have a commitment?

1 MR. HEALD: Yes, I do. I believe the Board is  
2 currently engaged in hearings for the watershed assessment  
3 package. I believe Board members are committed. I'm certainly  
4 committed to putting that out as a regulatory notice package by  
5 the July meeting at the latest so that the public will have an  
6 opportunity to comment on it, so the Senators will see the  
7 character of that package.

8 I believe the Board is prepared to also put  
9 portions -- I hope the Board is prepared to put portions of the  
10 existing interim package into permanent regulation, particularly  
11 those dealing with the maintenance and management of road  
12 systems and watercourse stream crossings, which are important  
13 for fish and sediment values.

14 CHAIRMAN BURTON: Senator Knight. One more shot  
15 at that joke.

16 [Laughter.]

17 SENATOR KNIGHT: I'll try another one. When  
18 you're standing in a hole, don't did it any deeper. You didn't  
19 get that one either.

20 Well, I got to ask the question. We talked about  
21 it before, Mr. Heald, but you've been identified with a  
22 quotation and indicating that, "one which may even grow from the  
23 barrel of a gun exists for those persons and institutions which  
24 resist the socialist revolution and are hostile to or sabotage  
25 socialist construction, defined as enemies of the people."

26 Your quotation was in your response justifying  
27 taking policies. You favorably compared the U.S. Constitution  
28 with Mao Tse Tung's Little Red Book of Quotations.

1 CHAIRMAN BURTON: Both of them were revolutionary  
2 documents.

3 SENATOR KNIGHT: You're correct, Mr. Chairman.

4 MR. HEALD: Yes, Senator.

5 SENATOR KNIGHT: With different objectives.

6 CHAIRMAN BURTON: Trying to overthrow the  
7 existing order.

8 MR. HEALD: I certainly made no reference to the  
9 long statement that you made.

10 I did make a statement at a committee hearing of  
11 the State Board of Forestry, which I was chairing at the time.  
12 It was one of those statements that, halfway out of my mouth, I  
13 wish I could have drawn it back, but I didn't.

14 And its sole intent was to encourage the members  
15 of the public who were present to begin a productive dialogue on  
16 the issues of the agency's rules package, which was in front of  
17 us, which was fairly technical in nature and dealt with salmon  
18 protection and watershed assessment.

19 It was by no means an attempt to demean the U.S.  
20 Constitution, which I revere and have taken many oaths to  
21 support.

22 But I did say it, but not that long soliloquoy  
23 that you made.

24 SENATOR KNIGHT: I assume we won't say it again?

25 MR. HEALD: You can count on that one, sir.

26 I would like to respond to one of your earlier  
27 questions that you asked several of the other members.

28 I believe we also have an obligation to look at



1 several opportunities. Watershed assessment obviously doesn't  
2 just apply to forest land, and the State Board of Forestry and  
3 Fire Protection has no authority beyond commercial timber land  
4 and wildlands of the state.

5 But we can encourage members of watershed  
6 communities, whether they're private landowners, or counties, or  
7 cities, to cooperate in watershed assessment and come to a  
8 mutual understanding about how to move forward with protecting  
9 natural resources.

10 I also think that we have the opportunity to  
11 recognize that private landowners make a variety of resource  
12 stewardship activities on their own. And we have not done as  
13 much as we could to recognize those. Some landowners have  
14 begun or completed habitat conservation plans with the National  
15 Marine Fisheries Services or U.S. Fish and Wildlife Service.  
16 And I believe those efforts have to be recognized in whatever  
17 sort of regulations that we provide.

18 Some private landowners have also voluntarily  
19 taken upon themselves to get third party review and  
20 certification of their activities. I think the Board of  
21 Forestry and Fire Protection should explore the extent to which  
22 that achieves similar results as any regulatory package we might  
23 have.

24 I think there's other things that we can do.

25 SENATOR KNIGHT: So, what you're saying is, you  
26 also have to be facilitators between organizations such as the  
27 county, private landowners, Fish and Game, other organizations,  
28 and still run a fine line of not taking of land, but being very



1 much aware of the environment and the rights of people on their  
2 lands.

3 MR. HEALD: Absolutely, Senator. There are many  
4 different ways to accomplish the same objective, and our job  
5 should be, in terms of policy, to make sure we recognize those  
6 that are accomplishing the objectives any way that they can and  
7 are willing to. So, I believe we should move forward with that.

8 CHAIRMAN BURTON: The new, environmentally  
9 sensitive Senator Knight.

10 SENATOR KNIGHT: I might be converted yet.

11 SENATOR HUGHES: You have one of the best  
12 academic backgrounds for serving in this capacity.

13 Do you find yourself oft times frustrated because  
14 your colleagues don't have the base of knowledge that you have?  
15 Do you give them service training to help to move your group  
16 along?

17 MR. HEALD: Well, Senator, I have to admit that I  
18 often receive in-service training.

19 SENATOR HUGHES: But that's not on the subject  
20 matter. That's on the dynamics of Board policy and process. Is  
21 that not true?

22 MR. HEALD: That's correct, Senator.

23 But a board with solely technically competent  
24 members doesn't really express the range of the public's  
25 interest and landowners' interest and the state. So, I find it  
26 very useful and positive that we have Board members from  
27 different backgrounds. You do learn from each other and from  
28 the public as they testify.

1                   SENATOR HUGHES: Well, I'd like to put you out of  
2 your misery and move the nomination.

3                   CHAIRMAN BURTON: Witnesses in support.  
4 Witnesses in opposition.

5                   Family?

6                   MR. HEALD: My wife is in Arizona on vacation,  
7 where I will be later this evening.

8                   CHAIRMAN BURTON: Smartest one in the family.  
9 Call the roll.

10                  SECRETARY WEBB: Senator Hughes.

11                  SENATOR HUGHES: Aye.

12                  SECRETARY WEBB: Hughes Aye. Senator Knight.

13                  SENATOR KNIGHT: Aye.

14                  SECRETARY WEBB: Knight Aye. Senator O'Connell.

15                  SENATOR O'CONNELL: Aye.

16                  SECRETARY WEBB: O'Connell Aye. Senator Burton.

17                  CHAIRMAN BURTON: Aye.

18                  SECRETARY WEBB: Burton Aye. Four to zero.

19                         [Thereafter, SENATOR LEWIS  
20 his Aye vote, thus making the  
21 final vote 5-0 for confirmation.]

22                  CHAIRMAN BURTON: Congratulations.

23                  MR. HEALD: Thank you very much.

24                  CHAIRMAN BURTON: Andrew Marckwald.

25                  MR. MARCKWALD: Good afternoon, Senator Burton,  
26 Members of the Committee. Thank you very much for the  
27 opportunity to be before you today.

28                         I have worked on California environmental issues

1 for the past twenty-plus years, first as the Undersecretary of  
2 the Natural Resources Agency. I subsequently worked with the  
3 Environmental Defense Fund, and as a board member of the League  
4 of Conservation Voters. And for the past 15 years, as a  
5 principal in my company, California Environmental Associates,  
6 which works with companies and trade associations and  
7 universities in trying to assess and solve their environmental  
8 problems.

9 I was nominated by Governor Davis as a public  
10 member in July of last year. I have worked first-hand,  
11 day-to-day, on environmental issues, and forestry issues are  
12 really a difficult, difficult nut to crack. The amount of  
13 regulation, the types of regulation, the ownership structure in  
14 the industry, the tools which have been applied so far are not  
15 working well, as the National Marine Fisheries testament to the  
16 struggle of the salmon. I don't think they're working well for  
17 the landowners. I don't think they're working well for the  
18 environmental interest.

19 So, in endeavoring to undertake a new way of  
20 looking for new ways to create forestry regulations, I think  
21 it's really the joint effort of all the members on the Board now  
22 to try to find this better way.

23 But in looking for it, we shouldn't deceive  
24 ourselves that we'll take one set of things which sound good,  
25 watershed assessment, cumulative impacts analysis, and not --  
26 and substitute it for prescriptive standards unless the people  
27 who really know what's happening on the ground can satisfy  
28 themselves that these changes are going to be ultimately



1 better with respect to sediment, to temperature, to fish  
2 survivability.

3 And if we can do that, then this performance-  
4 based forest practices approach is going to be better than the  
5 prescriptive one. Can we get there? I don't know, I mean on  
6 the timeframe.

7 I was the one who made the motion, and I will  
8 clearly make the motion again to get rid of the sunset and to  
9 ensure we have protections and enhanced protections in place,  
10 if, in fact, we're not ready to do a watershed package by that  
11 time.

12 So, with those opening comments, I'd be happy to  
13 entertain any questions that Members of the Committee might  
14 have.

15 CHAIRMAN BURTON: Are you involved in the Trinity  
16 River?

17 MR. MARCKWALD: Involved -- the Trinity, there  
18 are plans in front of us.

19 CHAIRMAN BURTON: Does Byron Liedecker mean  
20 anything?

21 MR. MARCKWALD: He does not.

22 CHAIRMAN BURTON: I think he called me to support  
23 you. It should mean something. He's out to save the Trinity  
24 River.

25 I think you commented on the main concern that I  
26 had.

27 Senator Knight.

28 SENATOR KNIGHT: No.



1 SENATOR HUGHES: Move it.

2 CHAIRMAN BURTON: Witnesses in support.

3 Witnesses in opposition.

4 An awful lot of people here concerned about the  
5 Public Utilities Commission, aren't there.

6 Do you have your family here at all?

7 MR. MARCKWALD: My wife is hard at work in the  
8 great city of San Francisco today.

9 CHAIRMAN BURTON: As she should be.

10 [Laughter.]

11 CHAIRMAN BURTON: Which building's at 2151  
12 Pacific.

13 MR. MARCKWALD: A brick two-story building on the  
14 right-hand side of the block, between something that would have  
15 never been built if you had been mayor in the '50s, and then a  
16 couple of Victorians on the downstream side.

17 CHAIRMAN BURTON: Let me tell you, Pete. When I  
18 was a young man working at United Parcel, the two biggest stops  
19 were 2100 Pacific and 2100 Jackson. They were always I. Magnin,  
20 Joe Magnin, and Ransohoff. High line places for a high line  
21 neighborhood.

22 Moved by Senator Hughes. Call the roll.

23 SECRETARY WEBB: Senator Hughes.

24 SENATOR HUGHES: Aye.

25 SECRETARY WEBB: Hughes Aye. Senator Knight.

26 SENATOR KNIGHT: Aye.

27 SECRETARY WEBB: Knight Aye. Senator O'Connell.

28 SENATOR O'CONNELL: Aye.

1 SECRETARY WEBB: O'Connell Aye. Senator Burton.

2 CHAIRMAN BURTON: Aye.

3 SECRETARY WEBB: Burton Aye. Four to zero.

4 [Thereafter, SENATOR LEWIS  
5 his Aye vote, thus making the  
6 final vote 5-0 for confirmation.]

7 CHAIRMAN BURTON: Congratulations.

8 MR. MARCKWALD: Thank you very much.

9 CHAIRMAN BURTON: Loretta Lynch.  
10 Members, it's my pleasure to introduce to us  
11 Loretta Lynch for a position on the Public Utilities  
12 Commission. She worked for the Governor's Office of Planning  
13 and Research. She was a partner in law firm headed by a dear  
14 friend of mine, John Keker. Clerked for Honorable Judge Dorothy  
15 Nelson of the Ninth Circuit, and was Special Consultant  
16 Litigator for Legal Aid Foundation in Los Angeles.

17 And was described with derision as being a Burton  
18 person down in the Governor's Office, so that's why they moved  
19 her right into an area where she no longer takes my direction.  
20 We'll get it done quick before he pulls you back.

21 [Laughter.]

22 MS. LYNCH: Thank you, Senator; thank you,  
23 Senators.

24 CHAIRMAN BURTON: And a good friend of our  
25 colleague, Johann Klehs.

26 MS. LYNCH: I am privileged to be here as  
27 Governor Gray Davis' appointee to the California Public  
28 Utilities Commission.

1 I look forward to improving protection of  
2 California consumers while we enhance California's economy. I  
3 take seriously my responsibility to implement statutory mandates  
4 as well as legislative direction as a member of the Public  
5 Utilities Commission.

6 I believe that there's a historic opportunity for  
7 the PUC to be on the same page as the Legislature, as well as  
8 the Governor, as we tackle issues during this period of historic  
9 industry transformation in the telecommunications and energy  
10 industries.

11 I welcome your questions.

12 CHAIRMAN BURTON: Were you here on this, Senator?  
13 Come on up.

14 SENATOR BOWEN: Thank you. I just wanted to take  
15 a couple of minutes to express my support for both President  
16 Lynch and Commissioner Wood.

17 In the brief time that they've been at the Public  
18 Utilities Commission, the ability of the Senate Energy,  
19 Utilities and Communications Committee to work collaboratively  
20 on issues where there is overlap between the responsibilities of  
21 the PUC and of the Legislature has been really extraordinary. I  
22 couldn't be more pleased with the level of communication and our  
23 ability to work together.

24 I think it will serve all Californians as we deal  
25 with the difficult transformation from a regulated structure for  
26 many of our utilities to a competitive one, and the many complex  
27 issues that raises, and the kinds of balances that have to be  
28 dealt with, not all of which were anticipated at the time that



1 we did some of the -- took some of the actions that led to  
2 deregulation.

3 So, I strongly urge your confirmation, your vote  
4 to confirm both President Lynch and Commissioner Wood.

5 I also want to emphasize that I think we are  
6 seeing a stronger commitment to consumer protection at the  
7 Public Utilities Commission, and that's very important because  
8 in a competitive market, the economic incentives to walk close  
9 to the edge are greater than in a regulated environment. And I  
10 think we have many Californians who are still quite confused by  
11 the newly, still relatively newly deregulated market. It's very  
12 important that we keep consumer confidence in our utilities.

13 Thank you.

14 CHAIRMAN BURTON: Thank you, Senator.

15 We had a discussion on the phone about the deaf  
16 and disabled telecommunication program. What role should the  
17 deaf and disabled play in the operation of it, or in the  
18 direction to it? And then, the inside-outside; you know,  
19 whether to bring it all in under the civil service, or leave  
20 some of it or all of it out.

21 So, could you comment on that, please?

22 MS. LYNCH: Certainly, Senator.

23 Last Thursday, the Commission passed the 2000  
24 DDTP deaf and disabled telephone program budget on a 5-0 vote.  
25 I had taken that budget originally off the Consent Calendar  
26 because the budget increased the staff from 36 to 70 positions,  
27 and I wanted to understand the increase as well as the program  
28 budget increase before I voted on it.



1                   In doing so, I learned of SB 669, Senator  
2 Polanco's bill, that was passed into law and signed by the  
3 Governor last year, which requires the Commission to report to  
4 the Legislature as well as the Governor on a transition program  
5 to bring the funding of the program in through the State  
6 Treasury. And the Public Utilities Commission has had several  
7 issues with other advisory committees in the past, prior to my  
8 tenure. I wanted to understand the workings of those issues as  
9 they relate to advisory committees, as they relate specifically  
10 to the DDTP program.

11                   I want to emphasize my support of the substantive  
12 DDTP program. We serve over 400,000 Californians in need of  
13 their services, and last year, the California Relay Program  
14 placed over 7 million telephone calls. And I applaud all those  
15 who are involved in providing the services.

16                   But I take seriously the mandates of SB 669, and  
17 therefore, prior to voting to pass the DDTP 2000 budget, I  
18 proposed a rule making in which we look at how we are going to  
19 comply as a Commission with SB 669 in bringing the program  
20 funding from an outside source and into the State Treasury. And  
21 both my draft rule making, as well as Commissioner Henry Duque's  
22 draft rule making -- Henry is here in the chambers with me --  
23 are before the Commission for a vote probably the next  
24 Commission budget.

25                   So, I don't pre-judge how we should comply with  
26 the mandates of SB 669. I just recognize that the mandates are  
27 there.

28                   CHAIRMAN BURTON: I think the only mandate was to

1 get the money inside, and not who you hire to spend it,  
2 basically; is that right?

3 MS. LYNCH: That was one of the mandates.

4 It's been explained to me that by operation of  
5 the law, if the funds become state funds, then only state  
6 employees can actually administer them. And the breadth of  
7 that requirement is really what is on the table for the  
8 Commission to study.

9 CHAIRMAN BURTON: Well, they would administer  
10 them, I guess, and I have no idea, would mean sending out the  
11 money, but they could send out the money to the people that are  
12 now doing the deal.

13 In other words, if it ain't broke, don't fix it  
14 type theory.

15 So, right now it's been run by the committee;  
16 right?

17 MS. LYNCH: That's correct. It's a nonprofit  
18 foundation.

19 CHAIRMAN BURTON: Right. How do they run it?  
20 What do they do? Somebody's doing work; right?

21 MS. LYNCH: Yes. Actually, up until now,  
22 primarily the work has been contracted out to the telephone  
23 companies. And historically, that was primarily Pacific Bell,  
24 although other phone companies are also involved to date.

25 But we are right at the period of transition from  
26 taking it away from particular phone companies, and one option  
27 is to provide a separate, independent structure to run the  
28 various programs.

1 Another option is to continue --

2 CHAIRMAN BURTON: What do they do when they run  
3 the program?

4 MS. LYNCH: The phone companies provide the  
5 operators that make the essential link between the person who is  
6 deaf on one end of the line, who is using the relay service, and  
7 then the hearing customer on the other end of the line.

8 CHAIRMAN BURTON: It would seem to me that  
9 probably the phone company is better equipped to do that, you  
10 know, God forbid, than some state employees, unless they ran  
11 state phone. And that's what they do. They run telephones.

12 MS. LYNCH: Well, certainly, I think it's  
13 anticipated that whoever administered the fund, the program  
14 would continue to contract with bonafide telephone companies in  
15 the State of California to provide the actual relay service.

16 There are several other ancillary services  
17 involved in getting the equipment that enables each deaf person  
18 to use the phone service.

19 CHAIRMAN BURTON: Geez, I hated it when they  
20 broke up the damn phone company. I'll tell you, life was  
21 simpler. Go down to Walgreens, buy yourself a phone.

22 All right, the deal on the reverse directories.  
23 Now, they used to be, before your time, there were reverse  
24 directories. In fact, you could call Information and get the  
25 telephone number; you could do that.

26 Now, all of a sudden, sometimes I get lucky, but  
27 you could lease from the phone company reverse directories, and  
28 political -- before the days of computers -- political campaigns



1 would do that.

2 Now, according to the Voice of West, San  
3 Francisco's only home-owned newspaper, the San Francisco  
4 Chronicle, Pac Bell's asking permission to create a new reverse  
5 directory to let the customers look up a name or address if  
6 they've got the number, which is a little bit different than  
7 before. Because basically, I guess, with the other thing that I  
8 do not like, caller ID -- who used to carry that bill; was that  
9 you? No, Teresa. Not Teresa; I mean Gwen.

10 But anyway, or, God forbid, you're in the men's  
11 room somewhere, and there's a phone number. And then you could  
12 look it up. By just having a phone number, you could look it  
13 up.

14 MS. LYNCH: That's a scenario I hadn't yet  
15 anticipated.

16 CHAIRMAN BURTON: I mean, you know, "Honi soit  
17 qui mal y pense," which again shows how eclectic we are. That  
18 means, "Evil to those who think evil of others."

19 It seems that's a little sticky, that you could  
20 find out somebody's -- there's a phone number, and all of a  
21 sudden, you could find out where somebody lives, and whatever.  
22 There's a lot of potential mischief and real danger in that.  
23 Not only on the, like, Steve Peace privacy issues, but it would  
24 seem to be like a very problematic thing.

25 MS. LYNCH: I have serious privacy concerns about  
26 the proposal that is before the Commission in the form of an  
27 advice letter request.

28 I also, as you recognized, Senator, know that



1 there are these kinds of reverse directories that do exist out  
2 there and on the Internet.

3 I'd like to correct a misimpression left by the  
4 reporter in that article, which was that this was essentially a  
5 done deal in front of the Commission.

6 One, it is not.

7 Two, I have serious concerns about the process by  
8 which this request was made. It was made through an advice  
9 letter request, which is usually relatively noncontroversial,  
10 rather than formal application before the Commission, which  
11 would then trigger public hearings and comment, and due process  
12 requirements.

13 CHAIRMAN BURTON: What was the advice letter?  
14 They said, can this be done?

15 MS. LYNCH: Correct.

16 CHAIRMAN BURTON: So, the answer is yes, it could  
17 be done if the PUC decides to do it with a reg; right?

18 MS. LYNCH: Well, the advice letter process is a  
19 staff recommendation generally to allow something to be done  
20 through the advice letter, which is a much more informal process  
21 than an application process.

22 CHAIRMAN BURTON: So, staff could, in theory, by  
23 advice letter, give somebody the ability to do something that  
24 they can't do?

25 In other words, an advice letter, you get an  
26 advice letter, kind of like the advice letter from the FPPC,  
27 where, you know, is this a violation of law if I take my  
28 daughter to the Democratic Convention and pay for it out of

1 campaign funds?

2 So, they would ask, can we do this? And then the  
3 staff could say, well, there's nothing to prevent it, and then  
4 they could kind of do it? Is that what an advice letter is?

5 MS. LYNCH: Not being familiar with the FPPC  
6 technical process, I don't want to make the exact comparison,  
7 but it's similar to that.

8 However, in this case, I want to assure the  
9 Committee that that will not be done because there have been  
10 protests to this request. So that will -- the request itself  
11 will come to the full Commission for a vote by each  
12 Commissioner.

13 CHAIRMAN BURTON: Do you see a difference  
14 between -- and I don't even know if they're still around -- the  
15 old reverse directories that were basically by street address as  
16 opposed to by phone number? I kind of see a difference.

17 MS. LYNCH: I definitely see the difference in  
18 terms of ease of access to this information, and how easy it  
19 will be for folks, on a wholesale basis, to get other folks'  
20 names and addresses on the basis of having their phone number.

21 So, I intend to take a serious look when this  
22 comes before the Commission. I also intend to take a serious  
23 look at the process by which the project was requested.

24 And in fact, in my book, it should go through a  
25 general application process, which would allow for public  
26 hearing and due process protections.

27 CHAIRMAN BURTON: As I said, the phone company  
28 would not sell you the reverse, but I think you could lease it

1 for 30, 60 or 90 days, and then you could always renew it.

2 In our office, we would have one, but I think the  
3 address, to me, is somewhat different from the phone number, but  
4 maybe not.

5 Senator Knight.

6 SENATOR KNIGHT: Yes, Chairman, I would agree  
7 with you, that if this reverse directory would go through, the  
8 numbers on men's room wall would increase ten-fold.

9 I have one other question. The number of phones,  
10 and the number of requirements for fixed phones and mobile  
11 phones is going to increase dramatically over the next number of  
12 years.

13 Is there a plan in place, or are you working on a  
14 plan to control disruption associated with changing area codes?

15 MS. LYNCH: Yes, Senator, we are.

16 The Governor had requested from FCC Chairman  
17 Cannard last August that California obtain additional authority  
18 in order for us to conserve our telephone numbers in  
19 California.

20 As you probably know, in 1997, California had 13  
21 area codes. Now we have 26, and it's projected that we'll have  
22 40 area codes by the end of 2003 unless we do something about  
23 this.

24 And I firmly believe, along with the Governor,  
25 that it's time to stop treating phone numbers as worthless. In  
26 fact, they're worth quite a bit.

27 So, the PUC, after California obtained additional  
28 authority from the federal FCC, has moved aggressively to start



1 number conservation measures. And in fact in March, we  
2 published a study of the remaining unused phone numbers in the  
3 310 Area Code.

4 As many Senators who are from the Los Angeles  
5 area know, the PUC last year was just about to implement an  
6 overlay in the 310 Area Code because of the assumption that we  
7 were out of phone numbers. And in fact, the staff analysis  
8 shows that almost 3 million unused phone numbers exist in the  
9 310 Area Code, out of 7.9 million numbers over all.

10 I believe that before we ask anyone in California  
11 to change their area code, we should first -- we, the PUC --  
12 should first be able to assure them that all the unused numbers  
13 actually get used up before we require small businesses or  
14 residential customers to go through the expense and the hassle  
15 of changing an area code.

16 So, we are now on the path of actively conserving  
17 phone numbers.

18 SENATOR KNIGHT: But I still didn't hear anything  
19 about a dedicated plan to control the area codes and the  
20 reassignment of area codes.

21 MS. LYNCH: Certainly.

22 The first thing we've done is, two meetings ago,  
23 so in March, the PUC instituted what's called fill rate  
24 requirements, so that each telephone company receives a block of  
25 numbers, a block 10,000 numbers currently. And before they can  
26 line up again to receive 10,000 more numbers, they have to fill  
27 75 percent of those numbers before they come back.

28 So, the first thing we did was say, "Before you



1 come back for more, you have to show us that you used the ones  
2 we gave you first."

3           The second thing we've done is implement -- when  
4 we started in the 310 Area Code, and we'll be studying doing it  
5 statewide, implement what's called number pooling, so that phone  
6 companies receive their numbers not in 10,000-number blocks, but  
7 in 1,000-number blocks. Then we'll take all those unused phone  
8 numbers and put them back in a pool to be reallocated out to new  
9 phone companies or phone companies that can demonstrate growth.

10           And in fact, we've started our pooling trial in  
11 the 310 Area Code, and it's been quite successful so far.

12           We're limited in how often and how far we can go,  
13 area code by area code, in implementing pooling by the FCC. The  
14 FCC wanted us to try it in one area code first, demonstrate  
15 success, and then sequentially do it in other area codes.

16           So, the 415 Area Code is up next for pooling, and  
17 then the 714 Area Code this coming year. So, we'll be pooling  
18 in those area codes which are at risk of exhaustion.

19           SENATOR KNIGHT: I guess my question goes to  
20 providing some kind of planning direction to business and home  
21 businesses who have stationery, cards, et cetera, all kinds of  
22 things with their phone number on it, including area code. And  
23 if they can have some indication as to when they might be  
24 changing area codes, they can, you know, correspondingly buy new  
25 stationery or whatever.

26           MS. LYNCH: Absolutely.

27           The FCC mandates that once an area code is  
28 projected to exhaust, meaning use all of its phone numbers, that

1 the PUC put out a general notice that we're going to change an  
2 area code -- and how we're going to change it specifically, down  
3 to exactly where the line is drawn if we're going to split that  
4 area code -- many months in advance. Then, two or three months  
5 right before that area code changes, we send out another notice  
6 to all consumers.

7 So, we are in the process of those area codes'  
8 that are projected to exhaust. We will be sending out  
9 appropriate notices far enough in advance.

10 However, before we even send out those notices,  
11 my view is that we need to ensure, by looking at the facts,  
12 that, in fact, the assumptions are correct.

13 And we saw in the 310 Area Code that, in fact,  
14 our assumptions were not correct, and that there were millions  
15 of unused numbers still available.

16 CHAIRMAN BURTON: Senator O'Connell.

17 SENATOR O'CONNELL Thank you, Mr. Chairman.

18 I've had an opportunity to communicate with both  
19 Ms. Lynch and Mr. Wood on the issue of rate regionalization,  
20 specifically as it applies to water and water delivery, where,  
21 when you look at some of the very small communities in our  
22 state, because of economies of scale and the cost of delivering  
23 water, in this case, it's quite expensive. Some communities  
24 have seen a four, five, six-fold increase in water almost  
25 overnight.

26 And I know that you're looking at proving some  
27 flexibility for some of the water purveyors, water delivery  
28 systems throughout the state for this rate regionalization. And

1 I certainly appreciate your willingness to look at that as one  
2 potential option, so that we don't disproportionately cost some  
3 of these smaller communities an exorbitant amount of money with  
4 some of the increased water costs throughout the state.

5 I appreciate that, your efforts and that of the  
6 Commission, in the past.

7 Thank you.

8 MS. LYNCH: Thank you, Senator O'Connell.

9 I take my job as a consumer myself. I am not  
10 from these industries. And so, the first question I ask is,  
11 what's the impact on the bill?

12 CHAIRMAN BURTON: What's in it for me?

13 MS. LYNCH: Not me in particular, but most  
14 Californians' bills.

15 CHAIRMAN BURTON: The generic me.

16 Senator Hughes.

17 SENATOR HUGHES: How did Pac Bell come up with  
18 the charge of 95 cents per call in the use of the reverse  
19 directory? Do you have any idea?

20 MS. LYNCH: You know, I don't. I have not taken  
21 a look at the specific support for that, Senator.

22 CHAIRMAN BURTON: For what?

23 SENATOR HUGHES: Per call for the use of the  
24 reverse directory.

25 CHAIRMAN BURTON: You mean for Information?

26 SENATOR HUGHES: That's right.

27 MS. LYNCH: No, for this reverse directory  
28 proposal, to access the reverse directory.



1 SENATOR HUGHES: Yes.

2 MS. LYNCH: Senator, I don't know.

3 CHAIRMAN BURTON: What is a 4-1-1 call now?

4 MS. LYNCH: The directory assistance.

5 CHAIRMAN BURTON: Yes, how much?

6 MS. LYNCH: Actually, I believe that the  
7 Commission, prior to my time, has increased the price for  
8 directory information beyond the 25 cents.

9 CHAIRMAN BURTON: One time they gave you five for  
10 zip.

11 Anybody here from Pac Bell? What's the charge?  
12 How much?

13 FROM THE AUDIENCE: It's 46 cents, Senator.

14 CHAIRMAN BURTON: How'd they come up with that?

15 FROM THE AUDIENCE: It's priced at our cost, what  
16 it costs to provide it.

17 CHAIRMAN BURTON: Not making a dime.

18 SENATOR O'CONNELL: They had to cover the cost of  
19 that new baseball stadium in your city.

20 CHAIRMAN BURTON: Exactly.

21 [Laughter.]

22 SENATOR HUGHES: What are your concerns for  
23 privacy in the utilization of the reverse directory? Are you,  
24 as the PUC, making any demand that we have some privacy involved  
25 there at all? Or, do you feel it's within your jurisdiction?

26 MS. LYNCH: In terms of the reverse directory  
27 proposal.

28 SENATOR HUGHES: That's right.



1 MS. LYNCH: Certainly, the PUC theoretically  
2 could work with Pac Bell to ensure that there's additional  
3 privacy.

4 SENATOR HUGHES: What do you intend to do as  
5 President regarding the privacy issue? That's what I should  
6 have asked you to begin with.

7 MS. LYNCH: Certainly. I will answer honestly,  
8 Senator.

9 I have not taken an in-depth look at this  
10 proposal because it has gone through a very informal process  
11 that wouldn't naturally always come up to the Commission.

12 So, at this point, I'm just starting to dig into  
13 it.

14 I have serious concerns. First, I want to  
15 recognize that these kinds of directories are out there. It's  
16 not that I can stop that.

17 SENATOR HUGHES: Yes, I know, but the fact that  
18 is it or is it not true that you have to put a notification in  
19 the phone bill that these directories are out there before they  
20 use them? That Pac Bell has to enclose that in your bill? I  
21 want to know.

22 MS. LYNCH: That's the proposal that's currently  
23 going through the advice letter process, that Pac Bell would  
24 notify folks --

25 SENATOR HUGHES: And that's usually how they do  
26 it. They stick it in with your phone bill. I throw away the  
27 rest of the junk when I make out the check to pay my bill.

28 Is that real notification to people? That's what

1 concerns me.

2 MS. LYNCH: Given that it took me forever to  
3 actually block my caller ID, because I kept throwing away those  
4 notices, I know as a practical personal matter, I don't think  
5 that should be the end of the story.

6 SENATOR HUGHES: So, you will tighten that up and  
7 see that it's done in a more informative way, whether we have to  
8 have radio or tv advertising, or something like that? Because  
9 it annoys me when I get all the junk in with the bill. I just  
10 want to pay the bill and get it over with.

11 But that is a very threatening thing, especially  
12 for people who live alone, or people who are threatened, and  
13 what have you.

14 MS. LYNCH: Absolutely, Senator.

15 I can't assure you that I'll do it by myself,  
16 because it takes three votes of the Commission to pass --

17 CHAIRMAN BURTON: That's why you're the  
18 Commission President.

19 SENATOR HUGHES: It only takes a leader to move  
20 it in the right direction.

21 MS. LYNCH: But I am going to take a serious look  
22 at the proposal and make sure that we have the appropriate  
23 procedural safeguards as we all look at it, so that all members  
24 of the public can come in and talk to us about their privacy  
25 concerns and their general concerns about this proposal.

26 SENATOR HUGHES: Thank you. I appreciate that.

27 CHAIRMAN BURTON: Getting back just quickly to  
28 the area codes. You might have gone over this when you talked

1 to Senator Knight and I didn't catch it.

2 But I read somewhere where guys used to get,  
3 like, phone numbers in 10,000-piece blocks.

4 Who got them, and they're just sitting on them  
5 and didn't use them? Where were these 3 million unused 310  
6 numbers? Somebody had them? Can they sell them like Giant  
7 tickets, or what?

8 MS. LYNCH: They can't sell them like Giant  
9 tickets, although those are hard to come by.

10 CHAIRMAN BURTON: I've got four. We can do  
11 business.

12 [Laughter.]

13 MS. LYNCH: There's really a variety of factors  
14 that led to various phone companies having a lot of unused phone  
15 numbers. One is, there's been an explosion of phone companies  
16 doing business in California. So, as a phone company comes in,  
17 they pick up 10,000 numbers every place that they do  
18 business.

19 CHAIRMAN BURTON: Whether they've got 10,000 or  
20 two subscribers.

21 MS. LYNCH: Absolutely. And it's not really the  
22 phone company's fault. The FCC mandated that we give out  
23 numbers in 10,000 blocks. So, we had to ask for special  
24 authority to give out numbers in 1,000 blocks.

25 CHAIRMAN BURTON: I would think that probably the  
26 Congress would pass legislation. It's got to be a problem  
27 everywhere. It's got to be a problem in Florida, Texas, where  
28 ever there's growth.



1                   Somebody raised the issue, and maybe it was  
2 Senator Bowen, that if you had special phone numbers, or a  
3 special area like for cell phones, almost that alone would solve  
4 it. Cell phones and faxes eat up an awful lot of the numbers.

5                   I think in L.A. itself, except downtown L.A.,  
6 there is no 213 Area Code any more.

7                   MS. LYNCH: Well, the 213 Area Code is quite  
8 circumscribed. I believe it's a ten-block square area now.

9                   CHAIRMAN BURTON: But a lot of the car phones and  
10 faxes down there are the -- because there cannot be as many  
11 phone numbers in 213 as there are in 415, or 310, or any of the  
12 others.

13                   I think 805, did yours change yet? And 805's 661  
14 now; right?

15                   SENATOR KNIGHT: That's right.

16                   CHAIRMAN BURTON: Somebody said that business  
17 would go nuts. Have you guys ever looked at that?

18                   MS. LYNCH: We are just starting to look at this  
19 right now. That is one option, to have what they call a  
20 technology overlay.

21                   However, California does not have the authority  
22 from federal government to implement a technology overlay. We  
23 have asked. The PUC has asked, and Governor Davis has asked,  
24 the FCC to give California that authority, but we don't have it  
25 yet.

26                   CHAIRMAN BURTON: Again, maybe they ought to  
27 address it to Feinstein, Boxer, Dryer, whoever, but to the  
28 Congress, because it's a problem for us. But I think in any



1 growth state, it's got to be a problem. It's just exacerbated  
2 here, but to give locals the ability to do something. You know,  
3 it's nuts.

4 I'm waiting for -- I guess San Francisco will  
5 always be 415 maybe, but I don't know what the hell's happening  
6 anywhere else.

7 MS. LYNCH: We're going to do our best to make  
8 sure that San Francisco's always 415.

9 CHAIRMAN BURTON: That's why we've got you there.

10 SENATOR KNIGHT: Why?

11 CHAIRMAN BURTON: Because she lives there.

12 SENATOR KNIGHT: Oh, I just wondered.

13 [Laughter.]

14 MS. LYNCH: But Senator, to answer your question,  
15 Texas has gone to 10-digit overlays. So, they just overlay so  
16 that new customers get a different area code. So that if you  
17 got a fax in your home, it may well be a different area code  
18 than your phone.

19 And that's what so many customers in the 310 Area  
20 Code objected to, and that's why the Governor petitioned the FCC  
21 for additional authority so that we can prevent that from  
22 happening.

23 We may still need to split, but the PUC, at the  
24 Governor's request, had shifted direction from overlays to  
25 aggressive number conservation.

26 CHAIRMAN BURTON: I think that is good. I would  
27 think, if I had my choice between keeping 415, and if I was dumb  
28 enough to have fax in my home, having different area codes for

1 the fax, then having the same area code for the fax as my home,  
2 but it's now 717.

3 Santa Cruz, for Christ's sake, has got two of  
4 them now. It was 408, and now it's 831.

5 MS. LYNCH: Yes.

6 CHAIRMAN BURTON: I mean, it's nuts.

7 SENATOR KNIGHT: One question. When you indicate  
8 that San Francisco will not change, does that indicate that San  
9 Francisco will not increase in population?

10 MS. LYNCH: No, not at all, but I believe, just  
11 as we found in the 310 study, that we're going to find a lot of  
12 unused numbers in 415, just as we will 714 and 949.

13 CHAIRMAN BURTON: If part of 415 changes, it's  
14 the northern part of my district, not the city. The city.

15 SENATOR KNIGHT: Okay.

16 CHAIRMAN BURTON: Not up the country, the city.

17 SENATOR KNIGHT: I know where it is.

18 CHAIRMAN BURTON: Witnesses in support, briefly.  
19 Name, rank and serial number.

20 MR. WHITE: Mr. Chairman and Members, John White,  
21 Center for Energy Efficiency and Renewable Technologies, in  
22 support.

23 MR. SMUTNY-JONES: Thank you, Mr. Chairman,  
24 Senators. Jan Smutny-Jones from the Independent Energy  
25 Producers, and we would urge confirmation.

26 Thank you.

27 MR. CARTER: Art Carter, representing the  
28 California Pipe Trades Council, and the State Association of

1 Electrical Workers, and the Sheet Metal Workers Union, in  
2 support of a very intelligent and effective leader for the PUC.

3 MR. BALGENORTH: Bob Balgenorth, State Building  
4 Trades, representing 200 construction unions. We're in strong  
5 support of Loretta Lynch.

6 MR. MONAGAN: Michael Monagan, on behalf of the  
7 Calpine Corporation in very strong support.

8 CHAIRMAN BURTON: Any opposition?

9 SENATOR HUGHES: Move.

10 CHAIRMAN BURTON: Any relatives in the audience?

11 MS. LYNCH: Being from an Irish Catholic family,  
12 I do have relatives in the audience.

13 My mother, Mary Lynch, is here from Independence,  
14 Missouri. My sister, Cecilia Lynch, and her family. My  
15 brother-in-law, Tom Warnke. And my niece and nephew, Bridgette  
16 and Aidan Warnke, are here.

17 CHAIRMAN BURTON: Call the roll.

18 SECRETARY WEBB: Senator Hughes.

19 SENATOR HUGHES: Aye.

20 SECRETARY WEBB: Hughes Aye. Senator Knight.

21 SENATOR KNIGHT: Aye.

22 SECRETARY WEBB: Knight Aye. Senator O'Connell.

23 SENATOR O'CONNELL: Aye.

24 SECRETARY WEBB: O'Connell Aye. Senator Burton.

25 CHAIRMAN BURTON: Aye.

26 SECRETARY WEBB: Burton Aye. Four to zero.

27 [Thereafter, SENATOR LEWIS

28 his Aye vote, thus making the



1 final vote 5-0 for confirmation.]

2 CHAIRMAN BURTON: Congratulations, Loretta.

3 MS. LYNCH: Thank you.

4 CHAIRMAN BURTON: Carl Wood.

5 MR. WOOD: Mr. Chairman, distinguished Senators,  
6 thank you very much for inviting me to appear at this  
7 confirmation hearing.

8 My name is Carl Wood. I was appointed by  
9 Governor Gray Davis to the Public Utilities Commission last  
10 June, and took office on June 21st. So, I've been serving for  
11 approximately ten months so far.

12 I'm an industrial maintenance electrician by  
13 trade. I have worked in the steel industry for about ten years.  
14 I've worked in the utility industry as a power plant electrician  
15 for about six years.

16 I served as the head of a local union in that  
17 industry for about 11 years, and then went on national staff for  
18 the Utility Workers Union, where I served as the National  
19 Deregulation Coordinator for that union.

20 In addition to those duties, I also served as an  
21 officer of the California Coalition of Utility Employees,  
22 participating in and representing that organization around  
23 regulatory issues.

24 So, I come to this position with a background  
25 both as someone who has done the work hands-on, who has actually  
26 carried tools in the industry, but also someone who has both  
27 represented workers in the industry, dealt with some of the  
28 companies, and also dealt with regulatory issues as they've come



1 up in this very rapidly changing industry.

2 Much of the industry that we regulate in energy,  
3 both electricity and gas, and telecommunications, even in water  
4 and in transportation, have, over last 20 years, and to an  
5 increasing degree in recent years, undergone a transformation  
6 from traditional cost-of-service regulation to the introduction  
7 of various forms of competitive incentives, and which are  
8 typically characterized as deregulation, but don't always really  
9 mean deregulation. Sometimes they just mean restructuring and  
10 introduction of different regulatory mechanisms.

11 In any case, this process has many times left  
12 consumers in the dust. It has, on the one hand, brought certain  
13 benefits in certain industries to consumers. Unfortunately,  
14 more for the larger consumers than for the small consumers, but  
15 there has also been, particularly we see in the  
16 telecommunications industry, the growth of various abuses  
17 against small consumers in particular. The growth of slamming  
18 and cramming, and other forms of unprincipled --

19 CHAIRMAN BURTON: I know slamming. I've been  
20 slammed.

21 What's cramming?

22 MR. WOOD: Cramming is the addition of  
23 unauthorized charges to one's telephone bill. It's done either  
24 through misrepresentation, as when someone is asked, say, to  
25 sign a card or to respond to a phone call, and then gets a  
26 service that they didn't think they were getting. Or sometimes  
27 it's done just outright fraudulently and with no contact with  
28 the consumer.

1 CHAIRMAN BURTON: Do you find both slamming --  
2 when I was slammed, it was some God-knows-who company in  
3 Atlanta, Georgia, became my long distance carrier.

4 Do you find that slamming and cramming is more  
5 with, for want of a better word, Johnny-come-latelys, as opposed  
6 to Pac Bell, General Telephone? Is it the new entries?

7 MR. WOOD: I think there's a continuum. There  
8 are large companies who engage in slamming, for example,  
9 especially through contracted companies that they hire to make  
10 their calls for them.

11 There are lots of these Johnny-come-lately, or  
12 fly-by-night outfits that do the same thing.

13 CHAIRMAN BURTON: Let's assume there was a big  
14 company, and Pac Bell's big, but I don't know if they would fit  
15 in this type thing, so they would hire somebody to call and get  
16 them customers, like maybe in Novato, which is why they have  
17 General Telephone, God only knows, when they're surrounded by  
18 Pac Bell.

19 Then maybe that company gets a percentage, if  
20 they you get new accounts, or they get you this, they get paid  
21 on a percentage basis, and then they just start kind of like  
22 phoney voter reg. slips, or something?

23 MR. WOOD: That is one of the forms of slamming  
24 and cramming that takes place, yes.

25 CHAIRMAN BURTON: Thanks.

26 MR. WOOD: Anyway, I don't want to go on at great  
27 length with my statement. I'd like to open myself up for  
28 questions from the Committee.

1                   CHAIRMAN BURTON: Why don't you comment a little  
2 bit on the questions that we hit on. Do you subscribe to  
3 Loretta's comments on the questions we asked about the area  
4 codes and the reverse directory stuff?

5                   MR. WOOD: Well, President Lynch is a tough act  
6 to follow. But I'll try to add just a couple of comments.

7                   One is on -- like her, this reverse directory  
8 issue just came to my attention in the last couple of days,  
9 basically. I read the same Chronicle article that you did.

10                  As Commissioner Lynch pointed out, the  
11 application didn't go through the more formal procedure that  
12 exists in the commission, but rather through an advice letter.  
13 Therefore, it didn't come before us.

14                  CHAIRMAN BURTON: Which raises a question we  
15 probably should have asked Loretta.

16                  Maybe you'd better take a look at the type of  
17 stuff that can be done by advice letters.

18                  I mean, conceivably, if a reporter hadn't gotten  
19 ahold of this, you would have had a process out there that,  
20 somehow, you would had to try to pull back. So, you may want to  
21 try to have some process where, when somebody gets an advice --  
22 I don't know how your bureaucracy works, but if it wasn't for  
23 some enterprising reporter who probably got tipped off by, you  
24 know, Sylvia Siegal's niece, or something, that you could have  
25 ended up with this as a done-deal.

26                  MR. WOOD: With all due respect, I think it's  
27 unlikely that, in this case, that would have happened.

28                  Our staff -- I wouldn't be surprised if our staff



1 was the source of the tip to the reporter.

2 CHAIRMAN BURTON: It shouldn't take a tip to the  
3 reporter to have something.

4 In other words, I don't know what it is, but I  
5 think it's just a suggestion that you may want to take a look at  
6 whatever it is that advice letter process, to see something as  
7 big a deal as this doesn't just go through because some staff  
8 guy said, "Well, yeah, I guess that one's all right."

9 MR. WOOD: Yes, and I agree with that. Even  
10 things where there is not some sort of outside notification,  
11 frequently someone within the Commission, including -- it could  
12 be a Commissioner will take notice of an issue that comes up and  
13 want to see it scrutinized more formally.

14 And I think certainly, in this case, it needs a  
15 great deal of formal scrutiny.

16 CHAIRMAN BURTON: Just take a look at it.  
17 That'll give Loretta something to do.

18 MR. WOOD: Yes. She's a very capable  
19 administrator.

20 I share the great concern over privacy issues,  
21 and also I note that this is -- the reverse directories are not  
22 a completely new invention. There is some experience in the  
23 world with reverse directories.

24 But I think that one of the reasons there's a  
25 need for a formal proceeding, that if we ultimately decide to  
26 allow Pacific Bell to go forward with this, and I don't grant  
27 that as a done-deal by any means, I think there has to be a  
28 great deal of careful attention given to the protections for



1 consumers that will surround the implementation of this,  
2 including appropriate notification that's actually effective,  
3 rather than just cursory, and an assurance that people will not  
4 have their phone numbers connected with their names without  
5 their positive assurance and confirmation.

6 CHAIRMAN BURTON: Senator Knight.

7 SENATOR KNIGHT: Sometime ago there was an  
8 increase in my phone bill associated with what they call Gore's  
9 tax, providing for Internet service within the school.

10 CHAIRMAN BURTON: That was proposed actually by  
11 Jeb Bush in Florida.

12 [Laughter.]

13 SENATOR KNIGHT: Whoever instituted it, how did  
14 that happen?

15 MR. WOOD: That was instituted before I was on  
16 the Commission, so I don't know the origins of it.

17 There's a program that is in place to provide --

18 SENATOR KNIGHT: How do you increase the tax bill  
19 like that without any approval from Congress or somebody?

20 MR. WOOD: I'm sorry, but I can't answer that,  
21 because I don't know the origins of the program. I don't know  
22 how it came into existence.

23 SENATOR KNIGHT: Nobody does.

24 CHAIRMAN BURTON: We have this guy named Ray  
25 Haynes that puts this stuff out.

26 [Laughter.]

27 MR. WOOD: He was my State Senator until a couple  
28 weeks ago.

CHAIRMAN BURTON: Let's get in, because you're an utility guy. What about the IOUs and the stranded costs? What's going to happen with this whole dereg thing as far as electric utilities, stranded costs, whether or not the CTC's going to expire? Are they going to get the cost? Are rates going to go up or down?

MR. WOOD: Well, the issue of stranded costs, I think, was settled with AB 1890, and so to a considerable degree, that is, I believe, off the table. The mechanisms are in place for recovery.

CHAIRMAN BURTON: Do you think they'll recover them before the CTC expires?

MR. WOOD: I think -- well, of course San Diego Gas and Electric has already been through their transition period and has recovered what's authorized.

I think that the other utilities will. PG&E and Southern California Edison will essentially recover the core of what they're entitled to under AB 1890.

In other words, I don't think this is going to be a big continuing issue. There are continuing issues before the Commission in terms of implementing various aspects of it.

So, in some respects, it's not a completely settled matter, but the largest part of it is done.

CHAIRMAN BURTON: Senator Hughes.

SENATOR HUGHES: Move the nomination.

CHAIRMAN BURTON: Witnesses in support, briefly.

Senator Speier.

SENATOR SPEIER: Mr. Chair and Members, I

1 actually was supposed to be here to introduce the  
2 Commissioner-select to you, and I'm late. I apologize for that.

3 I had the opportunity recently to spend two weeks  
4 on a trip with Mr. Wood. And while the length of our  
5 association is not long, I can suggest to you that we could not  
6 have a more intelligent voice on the PUC than him.

7 I am particularly impressed with his knowledge  
8 base, with his fairness, and frankly, with his initiative, which  
9 has already shown itself by his effort to bring a consumer Bill  
10 of Rights to the PUC for consideration.

11 I think that he is a real find for the PUC, will  
12 be an activist. And as the role of the PUC is really to be  
13 there to review rates and to make sure that rates are fair, and  
14 equitable, and representative of the need of the industries that  
15 are regulated, I think he will provide that kind of leadership.  
16 I think he'll be a great intellect on that board.

17 With that, I would urge your support.

18 CHAIRMAN BURTON: Thank you, Senator.

19 Other witnesses in support.

20 MR. SMUTNY-JONES: Jan Smutny-Jones with the  
21 Independent Energy Producers.

22 We, too, would encourage the confirmation of  
23 Commissioner Wood. We find him -- while we sometimes disagree,  
24 we always find him very thoughtful and accessible.

25 Thank you.

26 MR. KELLOGG: Jim Kellogg, representing the Pipe  
27 Trades.

28 I knew you didn't want to hear from me twice



1 today, so I'm here on behalf of both Loretta and Carl. I think  
2 that these are the two most brilliant appointments the Governor  
3 has made.

4 CHAIRMAN BURTON: Right after some of the  
5 appointments to the Transportation Commission.

6 MR. CARTER: Art Carter, representing the  
7 Electrical Workers and the Sheet Metal Workers, in strong  
8 support of a good labor person.

9 MR. MONAGAN: Mike Monagan again, on behalf of  
10 Calpine Corporation, in strong support.

11 CHAIRMAN BURTON: Witnesses in opposition.

12 Hearing none, do you have family with you?

13 MR. WOOD: Yes, I do. My wife has come with me  
14 to Sacramento. Her name is Ann.

15 CHAIRMAN BURTON: Senator Hughes has moved. Call  
16 the roll.

17 SECRETARY WEBB: Senator Hughes.

18 SENATOR HUGHES: Aye.

19 SECRETARY WEBB: Hughes Aye. Senator Knight.

20 SENATOR KNIGHT: Aye.

21 SECRETARY WEBB: Knight Aye. Senator O'Connell.

22 SENATOR O'CONNELL: Aye.

23 SECRETARY WEBB: O'Connell Aye. Senator Burton.

24 CHAIRMAN BURTON: Aye.

25 SECRETARY WEBB: Burton Aye. Four to zero.

26 [Thereafter, SENATOR LEWIS

27 his Aye vote, thus making the

28 final vote 5-0 for confirmation.]



1 CHAIRMAN BURTON: Thank you and congratulations.

2 MR. WOOD: Thank you, Senators.

3  
4 [Thereupon this portion of the  
5 Senate Rules Committee hearing was  
6 terminated at approximately 5:17 P.M.]

7 --ooOoo--  
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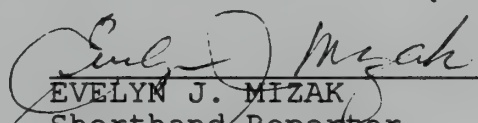
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR JOE BACA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

SENATOR JACK O'CONNELL

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

LEONARD MUNOZ, Member  
Board of Prison Terms

TINA DUNLAP, Staff Council  
Board of Prison Terms

SENATOR JOHN VASCONCELLOS

SENATOR RICHARD POLANCO

WENDY TAYLOR  
California Attorneys for Criminal Justice

RICHARD GOODMAN, Private Citizen  
Oakland



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--ooOoo--

CHAIRMAN BURTON: All right, Governor's appointee appearing, Leonard Munoz, Board of Prison Terms.

Come up, sir.

Senator Polanco and Senator Vasconcellos have asked that after the hearing today, that we take no action, but we have time to come back next week and take a vote pending new information that the two Senators were looking for. The drop dead date, I think, is May 20th, so we have no time constraints.

Mr. Munoz, please.

MR. MUNOZ: Thank you for having me here today, Mr. Chairman. Good afternoon, Senator Hughes, ladies and gentlemen.

I will be brief in telling you a bit about myself. I was born November 6, 1943, in Phoenix, Arizona. My parents are U.S. born citizens of Mexican extraction who worked in the agricultural industry in the Phoenix valley.

They brought the family to the Golden State in 1946, and I was raised in the Boyle Heights section of East Los Angeles.

I have five brothers and sisters, numerous nieces and nephews. I have been married to my one and only wife, Celia Munoz, for 32 years, and we have two children. My daughter, Melanie, is a teacher, and my son, Leonard Greg, is a student at Pasadena City College, aspiring to become a paramedic soon.

I have been a public servant almost all of my life, almost all of my adult life. I served my country in the



1 United States Marine Corps, with a tour of duty in Vietnam as an  
2 infantryman.

3 After an honorable discharge, I joined the LAPD,  
4 and I served the L.A. community for 30 years. During that time,  
5 I also served my residential community in the Whittier area by  
6 being elected to the Los Nietos School Board. I served from  
7 1985 to 1989, the last two years as President of that Board.

8 In addition, my last five years on the LAPD, I  
9 served the rank and file police labor force of the department  
10 after being elected as a Director of the L.A. Police Protective  
11 League.

12 During my time in the Marine Corps, during my  
13 service with the police department, during my four-year term on  
14 the school board, and during my five years as a labor official  
15 with the L.A. Police Protective League, I established a  
16 reputation for fairness, honesty, and integrity. I bring those  
17 qualities with me to the Board of Prison Terms. I bring those  
18 qualities to you and the people of California. And also of  
19 equal importance, I bring those qualities to the lifer inmates  
20 who come before me at parole consideration hearings, all of whom  
21 I will treat and all of whom I have treated with dignity and  
22 respect.

23 Thank you.

24 CHAIRMAN BURTON: How much time do you spend on  
25 each case prior to the hearings?

26 MR. MUNOZ: In preparation, sir?

27 CHAIRMAN BURTON: Yes.

28 MR. MUNOZ: It depends. The first day of the

1 week allows for travel, and we begin our hearings at about  
2 1:30. We usually get in there about an hour before that time,  
3 and we review cases for that day.

4 Now, in the evening when we go home, sometimes,  
5 and sometimes not, some of the members will take packets home or  
6 to the hotel room with them to prepare for the next day's  
7 cases.

8 To answer your question, I would say probably a  
9 fair estimate would be half an hour to 45 minutes to prepare for  
10 a case in total for each case.

11 CHAIRMAN BURTON: How many cases do you usually  
12 hear per hearing?

13 MR. MUNOZ: Well, for the week, there's usually  
14 22 or 23 cases for the week.

15 CHAIRMAN BURTON: So, you spend 11 hours a week  
16 preparing?

17 MR. MUNOZ: In total, maybe not quite about 20 --  
18 about 22, when you consider taking them home or to your hotel  
19 room to review the cases.

20 CHAIRMAN BURTON: You don't sleep at night or  
21 what?

22 MR. MUNOZ: Yes, I do sleep at night, sir.

23 CHAIRMAN BURTON: I mean, the time isn't there.  
24 In other words, these things just come up? How far in advance  
25 do your lawyers, or the agency, or somebody know that these  
26 hearings are going to take place?

27 MR. MUNOZ: What happens, sir, I don't prepare  
28 all 22 cases. I take a portion of the cases that I'd chair.

1 CHAIRMAN BURTON: How many do you do?

2 MR. MUNOZ: I would chair about half of those  
3 cases.

4 CHAIRMAN BURTON: If you don't chair them, are  
5 you sitting there? Is it just one on one?

6 MR. MUNOZ: No, sir. If I don't chair the  
7 hearing, I would conduct the segment that covers parole plans.  
8 And that is, what is the inmate going to do when he's on  
9 parole.

10 CHAIRMAN BURTON: So, somebody's up for parole.

11 MR. MUNOZ: Yes, sir.

12 CHAIRMAN BURTON: How many of you are sitting up  
13 here like us, board members?

14 MR. MUNOZ: It's a three-member panel, two of  
15 whom are commissioners, and one is a deputy commissioner.

16 CHAIRMAN BURTON: So, two of them are sitting.  
17 So, I assume each of them should be familiar with the case  
18 background and everything?

19 MR. MUNOZ: Yes, sir. Now, you have to  
20 understand that the hearing is held to delve into each case,  
21 into each inmate.

22 CHAIRMAN BURTON: Right.

23 MR. MUNOZ: Each person on that panel has a  
24 segment of that hearing.

25 CHAIRMAN BURTON: Right.

26 MR. MUNOZ: The chairperson usually handles the  
27 commitment offense, and the criminal history, and the social  
28 background, things of that nature.



1           The second person, and it's usually the deputy  
2 commissioner, handles what has happened with the inmate since  
3 his incarceration, post-conviction factors, from day one if it's  
4 an initial hearing.

5           CHAIRMAN BURTON: But you all vote; right?

6           MR. MUNOZ: Yes, sir.

7           CHAIRMAN BURTON: So, shouldn't you all know  
8 everything there is to know about the prisoner, to the extent  
9 you can?

10          MR. MUNOZ: Yes, and that's what the hearing's  
11 designed for in case, in preparation, something was overlooked,  
12 it would come out --

13          CHAIRMAN BURTON: How long do the hearings last?

14          MR. MUNOZ: Well, it depends. The initial  
15 hearings can last anywhere from an hour to two, two-and-a-half  
16 hours.

17          A subsequent hearing can last 45 minutes to an  
18 hour-and-a-half. But the general rule is that they last as long  
19 as the inmate wants it to last.

20          CHAIRMAN BURTON: We've been told that the  
21 hearings last sometimes several minutes, with the deliberations  
22 only taking four or five minutes. Is that accurate?

23          MR. MUNOZ: With all respect to you, sir, no,  
24 it's not. That is not --

25          CHAIRMAN BURTON: You don't have to respect me.  
26 I'm saying it's been said. I ain't saying it.

27          MR. MUNOZ: That's a falsehood, sir.

28          CHAIRMAN BURTON: It is?



1 MR. MUNOZ: Yes, sir.

2 CHAIRMAN BURTON: And then the decisions are  
3 prepared prior to the hearing?

4 MR. MUNOZ: No, sir.

5 CHAIRMAN BURTON: Never?

6 MR. MUNOZ: The decisions are prepared during  
7 deliberations.

8 CHAIRMAN BURTON: How can they prepare the  
9 decision until you decide how to vote?

10 MR. MUNOZ: That happens during deliberations.

11 CHAIRMAN BURTON: You decide how to vote during  
12 deliberations, not at the end of the deliberations?

13 MR. MUNOZ: We discuss the case during  
14 deliberations, and that helps us form the opinion we're going to  
15 have when we take a vote.

16 CHAIRMAN BURTON: Who writes the decisions?

17 MR. MUNOZ: The chairman is responsible for  
18 giving the decision. And the decision isn't written.

19 What it is, sir, it's read into the record, which  
20 is tape recorded.

21 CHAIRMAN BURTON: Just like, you just read it?  
22 The guy just reads yes or no?

23 MR. MUNOZ: No, there's a format. There's a  
24 format. We have two different formats, one for grants and one  
25 for denials. We use that as a guide when reading the decision.

26 When the person responsible for reading the  
27 decision is preparing that decision, he uses that format and  
28 adds or deletes what he thinks is appropriate.

1                   Then, when he calls the inmate back in, along  
2 with his attorney, that decision is read into the record.

3                   CHAIRMAN BURTON: In the Rosenkrantz case, where  
4 there was a pending court order, did you read the court order  
5 prior to the hearing?

6                   MR. MUNOZ: No, I did not, sir.

7                   CHAIRMAN BURTON: Why not?

8                   MR. MUNOZ: Well, that was -- there was an  
9 emergency situation in that particular case. I was, for that  
10 particular week, I was assigned to conduct hearings at Donovan  
11 State Prison in San Diego.

12                   The weekend prior to reporting to Donovan, I was  
13 in Ensenada, Mexico. I received word through my son that one of  
14 the commissioners assigned to hear the Rosenkrantz case in San  
15 Luis Obispo had lost his mother over the weekend. As a result,  
16 he had to cancel out of his appearance with Mr. Rosenkrantz.

17                   I was contacted. I was pulled out of Donovan,  
18 and I came straight home, and I reported to San Luis Obispo to  
19 take part in the Rosenkrantz hearing.

20                   CHAIRMAN BURTON: They never faxed you the court  
21 order?

22                   MR. MUNOZ: No, sir.

23                   CHAIRMAN BURTON: Who would have the  
24 responsibility of making that information available to you?

25                   MR. MUNOZ: Well, to be -- well, I would say if I  
26 had been thinking, I should have requested it.

27                   CHAIRMAN BURTON: But who is it, the lawyers?

28                   MR. MUNOZ: No, what happens is usually -- well,

1 almost every time, the chairperson in this particular case  
2 prepared himself, knowing that he was going to handle the  
3 Rosenkrantz hearing. And that's what the chairperson did.

4 CHAIRMAN BURTON: He read the court decision?

5 MR. MUNOZ: Yes, sir.

6 CHAIRMAN BURTON: Did the people call you, tell  
7 you there was court decision there that you ought to be aware of  
8 before you held the hearing?

9 MR. MUNOZ: No. I became aware of it once I got  
10 to San Luis Obispo.

11 CHAIRMAN BURTON: I'm sorry?

12 MR. MUNOZ: I became aware of it more fully once  
13 I reported to San Luis Obispo.

14 CHAIRMAN BURTON: Would it have made sense to,  
15 like, read the court order before?

16 MR. MUNOZ: Yes.

17 CHAIRMAN BURTON: Had the lawyers advised you  
18 that it made sense to do that, or they told you not to worry  
19 about it, or what?

20 MR. MUNOZ: No, they didn't tell me anything  
21 about that.

22 One of the reasons -- I did have a conversation  
23 with the attorneys, but I just wanted to make sure that, not  
24 being totally aware of the court order, that we were, in fact,  
25 going to be in compliance with that court order. I didn't want  
26 to do anything that would not be in compliance with that court  
27 order.

28 CHAIRMAN BURTON: What did the lawyers tell you?



1 They just kind of left you there with Pat Gray?

2 MR. MUNOZ: Well, they didn't take part in the  
3 deliberations. They didn't tell me what to do, or how to do  
4 it.

5 They just assured me that by holding the hearing,  
6 we were in compliance. We, the Board of Prison Terms, was in  
7 compliance with that court order.

8 CHAIRMAN BURTON: What did the court order say?

9 MR. MUNOZ: The court order said to -- the main  
10 thing it said was to give a parole date to Inmate Rosenkrantz.

11 CHAIRMAN BURTON: So, it didn't say, hold a  
12 hearing? It said, give him a date?

13 MR. MUNOZ: It said hold a hearing and give a  
14 date to Inmate Rosenkrantz.

15 CHAIRMAN BURTON: Right. Holding a hearing was  
16 not in compliance. That was partial compliance. Holding a  
17 hearing and giving a date would have been compliance.

18 MR. MUNOZ: I guess, yeah, it can be interpreted  
19 that way, yes.

20 CHAIRMAN BURTON: Yes.

21 Are any of the lawyers here?

22 MR. MUNOZ: I believe so.

23 CHAIRMAN BURTON: We may want to be talking to  
24 them.

25 What considerations does the Board take into  
26 account in determining suitability for parole?

27 MR. MUNOZ: There are many factors involved.  
28 Some of those factors include the gravity of the commitment



1 offense itself.

2 Many times, rather than being a solitary murder,  
3 it may be a multi-murder.

4 CHAIRMAN BURTON: Let's assume it's a solitary  
5 murder.

6 MR. MUNOZ: We take into account the gravity of  
7 the offense, the way it was carried out, the inmate's criminal  
8 history or lack of it. Also his social background. We consider  
9 his vocational background, whether he has a vocation to fall  
10 back on if he is given a parole date. We consider what his  
11 parole plans are.

12 We consider the way he's behaved while  
13 incarcerated, whether was able to adjust, he or she, was able to  
14 adjust to the rules of the institution. And we consider that  
15 because, of course, that would be a reflection on whether that  
16 person can adjust to the rules and regulations of society in  
17 general.

18 CHAIRMAN BURTON: So, the court found in  
19 Rosenkrantz that it would be "difficult to imagine any inmate  
20 could present a better picture than the defendant has in terms  
21 of background, institutional adjustment, and parole plans."

22 MR. MUNOZ: My own personal opinion?

23 CHAIRMAN BURTON: Yes.

24 MR. MUNOZ: My own personal opinion, the opinion  
25 I formulated after delving into Mr. Rosenkrantz' case and  
26 looking at all the factors was that you're probably right.

27 CHAIRMAN BURTON: I'm reading the Court. I ain't  
28 right or wrong.

1 MR. MUNOZ: There probably isn't an inmate that  
2 could have or has programmed better than Mr. Rosenkrantz. But  
3 one of the other factors I considered was the gravity of the  
4 offense itself.

5 CHAIRMAN BURTON: That he killed somebody.

6 MR. MUNOZ: Yes, sir.

7 CHAIRMAN BURTON: He wouldn't have been there if  
8 he didn't.

9 MR. MUNOZ: Pardon me, sir?

10 CHAIRMAN BURTON: He would not have been there if  
11 he didn't. We're dealing with people who kill people in most of  
12 this stuff.

13 MR. MUNOZ: Not necessarily, sir. If the victim  
14 had survived, then he probably would have been charged with  
15 attempted murder, and attempt murder defendants are also lifer  
16 prisoners.

17 You don't have to be murderer to be a life-term  
18 prisoner.

19 CHAIRMAN BURTON: All right. I'll give you  
20 that.

21 Well, basically, single murderers or single  
22 attempted murderers, they say that like about 98 percent of  
23 them, if they're let out, are not recidivists.

24 So, there have been, out of 2,142 lifers in  
25 '98-99, and 16 in the calendar year '99, 14, I guess, have been  
26 found suitable for parole.

27 Is there like an informal policy of setting  
28 parole dates, or how does that work?

1 MR. MUNOZ: I think the figures that you alluded  
2 to are correct. There isn't much recidivism as far as murderers  
3 go.

4 However, again, one of the factors I considered,  
5 what I personally considered, was the gravity of the offense  
6 that Mr. Rosenkrantz committed.

7 CHAIRMAN BURTON: What's graver than murder?

8 MR. MUNOZ: The manner in which he committed  
9 that, sir. And that's how I connected to a danger to society,  
10 to the public at large. He used an Uzi and shot the victim ten  
11 times.

12 CHAIRMAN BURTON: Well, it's pretty tough using  
13 an Uzi to shoot him less than ten.

14 MR. MUNOZ: That's true.

15 CHAIRMAN BURTON: That's why we tried to outlaw  
16 them.

17 MR. MUNOZ: That's a true statement, sir, and I  
18 commend you for your efforts in trying to outlaw them.

19 CHAIRMAN BURTON: I'm not in favor of that, but I  
20 mean, if he didn't have an Uzi, and he had a .45, I guess he  
21 might have shot him once or twice, but dead is dead.

22 The Board of Prison Terms list of criteria for  
23 unsuitability includes: commitment offense, previous record of  
24 violence, unstable social history, sadistic sexual offenses,  
25 psychological factors, institutional behavior.

26 How do you make decisions without acting in an  
27 arbitrary manner? I guess if you take the commitment offense,  
28 you're dealing with a murder.



1           So, you're taking everything else, at least with  
2 this person, you agreed with the assessment of the court about  
3 the adjustment, progress, and parole plan, and everything else.

4           I mean, the Board can just kind of, really, when  
5 it's all over, do whatever they want, right, except if a court  
6 steps in?

7           MR. MUNOZ: I'm sorry, sir. I didn't quite  
8 understand the last part.

9           CHAIRMAN BURTON: I guess when it's all over,  
10 unless a court tells you otherwise, which they did here, and for  
11 some reason the lawyers felt it wasn't important enough to tell  
12 you that you may be violating a court order, the Board can do  
13 whatever they want as far as holding people back?

14           MR. MUNOZ: No, we can't do whatever we want.  
15 What we have to do is consider all the factors that are involved  
16 in each particular case.

17           Now, it may be that any particular inmate has not  
18 served the requisite amount of time, and yet he's behaved  
19 wonderfully while incarcerated. He's programmed very well.  
20 He's gotten an education. He has family support in place. He  
21 has a job waiting for him.

22           But if the crime is so great, the gravity of the  
23 crime is so great, and he hasn't reached the amount of time that  
24 the judge had sentenced him to, then there's probably not going  
25 to be a parole date given. He probably won't be found suitable  
26 for parole.

27           And I'm speaking from my perspective.

28           CHAIRMAN BURTON: Of course; of course.



1                   MR. MUNOZ: I can't speak for the other  
2 commissioners on the Board.

3                   CHAIRMAN BURTON: I understand that.

4                   So, twenty to life means life without possibility  
5 of parole? What does it mean when somebody's sentenced to a  
6 period up to life? Does that mean El Wop, or doesn't that  
7 assume that probably people --

8                   MR. MUNOZ: Sometimes we have to try to get into  
9 the mind of the judge that gave that sentence. Now, did he mean  
10 he has to serve at least twenty years? Or, did he mean he can  
11 go out the door at twenty years?

12                   CHAIRMAN BURTON: Don't you think judges know  
13 what the law is, and if they say it's twenty to life, and that  
14 there's possibility of credits or whatever, can't we assume they  
15 know that? Why do you have to get in their mind for?

16                   MR. MUNOZ: One of things we do, sir, in this  
17 process is, in compliance with 3042 of the Penal Code, is that  
18 we send out notices to all the entities involved in the  
19 situation, including the trial judge. And unfortunately, very  
20 few times do we get responses as far as getting the position of  
21 the trial judge.

22                   CHAIRMAN BURTON: Then isn't it safe to assume  
23 that he thought that the sentence spoke for itself?

24                   MR. MUNOZ: Well, if he's sentenced to twenty  
25 years to life --

26                   CHAIRMAN BURTON: Knowing that there are,  
27 depending, I guess, on good-time credits, or whatever, but they  
28 understand what the law is when they sentence.

1 MR. MUNOZ: But if the inmate has not conformed  
2 to the rules and regulations of the institution, sir --

3 CHAIRMAN BURTON: That's one thing. We're  
4 talking about the ones that do.

5 MR. MUNOZ: Okay.

6 CHAIRMAN BURTON: We're talking about, let's take  
7 Rosenkrantz. If he didn't have an Uzi, he probably would have  
8 shots somebody twice instead of ten times, because that's what  
9 Uzis do. That's why we don't like them. Wouldn't make it if he  
10 shot him with a .45 right.

11 But, you know, the fact is that it was the weapon  
12 that he had as opposed to what he did, I guess?

13 MR. MUNOZ: Well, it's not just the weapon, sir.  
14 As I was saying earlier, it's the manner in which he committed  
15 the crime.

16 He not only shot the victim with an Uzi ten  
17 times, but his final shot was, he shot the victim in the head  
18 after the victim had already fallen to the pavement.

19 CHAIRMAN BURTON: He shot him in the head once.  
20 If you fire an Uzi, Uzis are automatic weapons.

21 SENATOR KNIGHT: Are they fully automatic?

22 CHAIRMAN BURTON: Yeah, I think so.

23 MR. MUNOZ: Yes.

24 SENATOR KNIGHT: I think they're illegal in the  
25 state, illegal in this country.

26 CHAIRMAN BURTON: Well, this guy was in before  
27 the Roos-Roberti law.

28 MR. MUNOZ: This was in 1985, sir.

1                   CHAIRMAN BURTON: It was before the law making  
2 them illegal.

3                   Anyway, do you think, getting back, assuming  
4 there are some people, that the recidivists, most of them are  
5 really, like, the technical violations. You know, peeing dirty  
6 in a bottle, missing an appointment with the parole officer,  
7 probation officer, et cetera.

8                   Do you think it would make sense to the taxpayers  
9 and to justice if a lot of these violators were directed to drug  
10 treatment programs and alternate punishment, as opposed to being  
11 put back in state prison at a 30 grand a year cost?

12                   In other words, if they did something real bad,  
13 they ought to just try them and stick them away for another long  
14 period of time.

15                   MR. MUNOZ: You're talking when an inmate's on  
16 parole?

17                   CHAIRMAN BURTON: Yes.

18                   MR. MUNOZ: I tend to agree with what you just  
19 said. I think it would save the taxpayers a lot of money.

20                   I don't think a parolee should be sent back to  
21 prison for a ticky-tacky offense or violation. Maybe he missed  
22 a meeting with the parole officer. I don't think that should be  
23 cause to send him back to prison. I think that should be cause  
24 to sit him down and read him the riot act, but not necessarily  
25 send him back to prison at taxpayers' expense.

26                   CHAIRMAN BURTON: That's like 58 percent of the  
27 revocations are semi ticky-tacky.

28                   MR. MUNOZ: Senator Burton, I might add that as a



1 commissioner on the Board of Prison Terms, we don't get involved  
2 with those types of situations.

3 CHAIRMAN BURTON: Who's revoking them?

4 MR. MUNOZ: The deputy commissioners do that.

5 CHAIRMAN BURTON: They work for you? You guys  
6 set the policy.

7 MR. MUNOZ: Well, yeah.

8 CHAIRMAN BURTON: Could you not say that we  
9 aren't interested in ticky-tacky revocations?

10 MR. MUNOZ: I get your point, sir. Yes, sir.

11 CHAIRMAN BURTON: I just have a few more.

12 Can you provide the Committee with an update on  
13 what's happening with the Armstrong ADA decision, Disabilities  
14 Act?

15 MR. MUNOZ: Yes, I can. I know that the Board of  
16 Prison Terms is very, very concerned with that situation. We  
17 have training on that almost every chance -- every time our  
18 office gets a chance to. We had some training last December, in  
19 a week-long training session that was held here in Sacramento  
20 for commissioners and deputy commissioners.

21 We all fully understand that anyone that suffers  
22 from a disability covered in the ADA should be accommodated.

23 I know a lot of the situations that occurred in  
24 the early '90s should never have happened. I've always,  
25 personally speaking, I've always treated everyone with respect  
26 and dignity. And anyone that's confined to a wheelchair and  
27 needs help up a set of stairs, I've always given it.

28 I don't think because a person is handicapped or



1 disabled, that he should be treated as a second-class person.  
2 And I've always felt that way.

3 CHAIRMAN BURTON: Once an inmate has served, say,  
4 the minimum time, so rehabilitation itself is not a sufficient  
5 condition for release? Rehabilitation would assume, you know,  
6 that they had, I guess, a good parole plan. They had a family  
7 or a job to go to. They were model prisoners, or whatever it is  
8 in prison.

9 And that, in and of itself, is not sufficient,  
10 because you continue to look back to the underlying crime?

11 MR. MUNOZ: That is one of the factors we  
12 consider.

13 CHAIRMAN BURTON: That's the overwhelming factor.

14 MR. MUNOZ: Yes, sir. I think it'd be safe to  
15 say that.

16 CHAIRMAN BURTON: How about Rosenkrantz shot  
17 somebody with a .45 once, killed him right in the heart, instead  
18 of an Uzi with ten shots?

19 MR. MUNOZ: As you indicated earlier, that still  
20 is a very serious crime. Murder is the most serious crime.

21 CHAIRMAN BURTON: But you keep bringing up the  
22 fact that he shot him ten times.

23 If he shot him once in the heart, given the fact  
24 also that murderers, this type, have the lowest rate of  
25 recidivism of any criminals in the system.

26 MR. MUNOZ: What you've stated is certainly  
27 something to consider, but I would still go back to the manner  
28 in which Mr. Rosenkrantz committed the crime.

1 CHAIRMAN BURTON: I'm asking you, if he shot him  
2 once in the heart. So, it wasn't ten times with an Uzi. The  
3 tenth shot didn't hit him in the head after he fell down dead,  
4 although we probably don't know that for certain.

5 But one shot in the heart. Boom, dead.

6 MR. MUNOZ: And you're asking me whether --

7 CHAIRMAN BURTON: Would that make a difference  
8 versus the ten?

9 I'm wondering what it would take for somebody to  
10 get out on parole who, unfortunately, took a life, but yet they  
11 weren't eligible for life without possibility. So, it was  
12 assumed in the laws and the sentencing that, at some point,  
13 these people were rehabilitated and not a danger to anybody,  
14 except maybe politically if you were on the Board of Prison  
15 Terms and wanted to run for mayor of Ontario; it might come back  
16 to bite you, but besides that.

17 MR. MUNOZ: Well, I don't want you to think I'm  
18 beating around the bush.

19 CHAIRMAN BURTON: No, that's all right. It's not  
20 an easy question. It's sort of hypothetical, to say the least.

21 MR. MUNOZ: But again, there are many factors to  
22 consider, and one of them is, one of the things I run through my  
23 mind each and every time I hold a hearing or take part in a  
24 hearing is, will this individual seated in front of me, will he  
25 be a danger to the general public? Will he be a threat to the  
26 public safety?

27 CHAIRMAN BURTON: And you just agreed with me  
28 that only two percent of them are recidivists.

1 MR. MUNOZ: That's true. But if you're referring  
2 to the Rosenkrantz case, and I have no prejudices in the  
3 Rosenkrantz case. I only know what is factually in front of me,  
4 is that this gentleman went to a shooting range, practiced  
5 shooting, purchased an Uzi, and used that Uzi to kill a human  
6 being, shot him ten times. The final shot, after he had fallen,  
7 was to the head. And to me --

8 CHAIRMAN BURTON: We really don't know if that  
9 was the tenth of ten shots, or there were nine bursts and one.  
10 I understand that.

11 But if the judge or jury would have found it  
12 premeditated murder, he wouldn't have been on a potential life  
13 up to life. He would have been life without possibility of  
14 parole or probably on death row, awaiting Godot, or somebody.

15 Senator Lewis.

16 SENATOR LEWIS: In 1999, there were 16 lifers  
17 that were recommended for parole. The Governor overturned every  
18 one of those cases, as I understand it.

19 That being the case, what is your thought process  
20 right now? Do you believe the Governor has an unofficial policy  
21 to withhold on all those types of cases?

22 MR. MUNOZ: I know that the Governor has a  
23 separate authority, an authority separate from ours. And he has  
24 the authority to review those cases that we recommend parole  
25 suitability for.

26 Whatever decision he makes, he makes. He  
27 considers the well-being of the public, I imagine. I don't  
28 know.



1 I don't know if he has a policy. I know what I  
2 read in the papers. I know of the comments that are attributed  
3 to him.

4 He's never talked to me about any personal policy  
5 that he might have.

6 I don't know if that answers your question,  
7 Senator Lewis.

8 SENATOR LEWIS: Does that have any impact at all  
9 on your thought process if you thought the Governor did have a  
10 policy like that. Would you change any of your recommendations  
11 or actions, or do you think it might have any impact on the  
12 Board in any manner?

13 MR. MUNOZ: No. I take my responsibilities very  
14 seriously, and I take it as an individual. And I consider all  
15 the factors. I form an opinion, and I vote my conscience.

16 I've always done that, not only here on this  
17 board, but on other boards that I've served on before.

18 And if the Governor reverses or changes what I  
19 recommend, that's the Governor's business, sir, is all I can  
20 say. I've done my part.

21 SENATOR LEWIS: Thanks.

22 CHAIRMAN BURTON: Senator Hughes. Senator  
23 Knight.

24 SENATOR KNIGHT: Just a couple questions.

25 You mentioned the rate of recidivism for those  
26 kinds of inmates who are twenty to life is two percent; is that  
27 correct?

28 MR. MUNOZ: I believe so. I read that figure



1 elsewhere, and I think that's pretty close.

2 SENATOR KNIGHT: Is that pretty close?

3 MR. MUNOZ: Yes, sir.

4 SENATOR KNIGHT: So, there are those who would  
5 commit those same crimes again if you turned them loose?

6 CHAIRMAN BURTON: A crime, not the same crime.

7 SENATOR KNIGHT: I guess that's right. They  
8 couldn't commit same one over.

9 CHAIRMAN BURTON: No, but I mean, they might well  
10 go steal a car. It doesn't necessarily mean two percent murder  
11 again.

12 SENATOR KNIGHT: Oh, I thought that you were  
13 talking about the recidivism rate of committing a similar crime.

14 CHAIRMAN BURTON: Recidivism means you come back,  
15 you recede.

16 SENATOR KNIGHT: I understand the term, but for a  
17 similar crime. That's what I'm asking.

18 If a murderer is turned loose on parole, and he  
19 commits another murder, he goes back; right?

20 CHAIRMAN BURTON: Yes. If a murderer is turned  
21 loose on parole and they steal a car, they'll go back.

22 SENATOR KNIGHT: I understand, but I'm asking  
23 what's the recidivism rate of those paroled that commit a  
24 similar crime and go back?

25 CHAIRMAN BURTON: How many of them murder again?

26 SENATOR KNIGHT: Yes, that's what I'm trying to  
27 get to.

28 CHAIRMAN BURTON: Plain English does it all the

1 time.

2 MR. MUNOZ: I don't know exactly, sir, but it's  
3 very low.

4 SENATOR KNIGHT: Then when you have a number of  
5 cases that the Board is going to review, how many cases total  
6 per meeting, per session that you have?

7 MR. MUNOZ: Usually about 22 or 23 cases in a  
8 week's time, from Monday till Friday night.

9 SENATOR KNIGHT: And out of those, say, 22, how  
10 many of them can you look at and say, those are automatic  
11 denied? Just kind of --

12 MR. MUNOZ: It depends -- realistically, sir, it  
13 depends what institution you're in. If you're in an institution  
14 like Pelican Bay or Corcoran, where many of the inmates are in  
15 administrative segregation or housing in the SHU, segregated  
16 housing, and they have a high classification score, it's not  
17 unusual for inmates at either one of those institutions to have  
18 a classification score of 200, 250, close to 300. And that's  
19 extremely high.

20 SENATOR KNIGHT: I don't know what that means.

21 But what I'm asking is, usually you can look at a  
22 folder that is representing some individual, whether it's a  
23 performance folder or a folder that would qualify him for a  
24 parole, and you can look at those. After looking at so many  
25 over the years, or over a year, and you can say, obviously, he's  
26 not eligible.

27 You can take five minutes or two minutes and say,  
28 obviously, he's not eligible.

1           MR. MUNOZ: It would be easy to do that; however,  
2 we have to allow for the inmate to present his case. We have  
3 to allow for him to explain things that may seem inexplicable to  
4 us. We have to give him his time, his turn at bat. He might be  
5 able to justify some of the things that look, on the surface, to  
6 be dead man issues. And that's what we do. We give him that  
7 opportunity.

8           SENATOR KNIGHT: So, he has unlimited time to  
9 present his case?

10          MR. MUNOZ: Yes, sir.

11          SENATOR KNIGHT: Okay.

12          CHAIRMAN BURTON: So, there are no time  
13 constraints on the prisoner?

14          MR. MUNOZ: No, there's nothing outlined where a  
15 prisoner has time constraints.

16                 Sometimes this happens on occasion, if an inmate  
17 gets repetitive or goes over the same issue over and over again,  
18 we may tell him that that point has been made, and move on to  
19 newer ground.

20          CHAIRMAN BURTON: I'd like to go to the women  
21 down in Frontera. Some are lifers. I think a few are lifers  
22 without, and some are up to life. Most of whom, if not all of  
23 whom, were convicted before the battered woman syndrome evidence  
24 was admissible as either a mitigating case, or whatever.

25                 Have you had any hearings on them?

26          MR. MUNOZ: I've been -- Senator, I've been to  
27 Frontera one time. I heard, I believe, three cases. Then I  
28 moved to another institution.



1 CHAIRMAN BURTON: Do you remember the three  
2 cases?

3 MR. MUNOZ: I don't remember them specifically.  
4 I don't recall the names, but I do know that I did not vote for  
5 a parole suitability for any of the three. I recall that.

6 CHAIRMAN BURTON: Based on what? Do you  
7 remember?

8 MR. MUNOZ: Based on, again, the gravity of the  
9 crime.

10 CHAIRMAN BURTON: Did you take into consideration  
11 the fact that, assuming they were the same women that I  
12 interviewed down there, the fact that their husbands were  
13 beating them with baseball bats, and one of them even with a  
14 sledge hammer and other stuff before they ended up killing him?

15 MR. MUNOZ: The three cases that I handled, I  
16 don't recall that being the scenario. These were robberies  
17 that these women were involved in, the three inmates were  
18 involved in. There weren't any domestic violence cases.

19 CHAIRMAN BURTON: All right, so they were  
20 basically felony murder?

21 MR. MUNOZ: Yes.

22 CHAIRMAN BURTON: They were murders or just  
23 robbery?

24 MR. MUNOZ: Murders committed during a robbery,  
25 yes.

26 CHAIRMAN BURTON: Felony murders or just robbery  
27 itself?

28 MR. MUNOZ: No, they were felony murders. I



1 mean, all murders are felonies. It was a murder that was  
2 committed during a robbery; yes, sir.

3 CHAIRMAN BURTON: Felony murder robbery.

4 And you did not hear any of the battered woman  
5 syndrome things then?

6 MR. MUNOZ: Not in those cases, no, sir. Those  
7 issues were never brought up.

8 CHAIRMAN BURTON: Do you think that would be an  
9 important issue if someone came before you with that, assuming?

10 MR. MUNOZ: Yes, I do.

11 CHAIRMAN BURTON: I want to ask just briefly, and  
12 then witnesses in support and opposition, but maybe if the  
13 lawyer for the Board might come forth.

14 Could you just identify yourself for the record?

15 MS. DUNLAP: Tina Dunlap, D-U-N-L-A-P.

16 CHAIRMAN BURTON: And you are?

17 MS. DUNLAP: Staff counsel for the Board of  
18 Prison Terms.

19 CHAIRMAN BURTON: For how long have you been  
20 there?

21 MS. DUNLAP: July, 1994.

22 CHAIRMAN BURTON: And before that?

23 MS. DUNLAP: Before that I worked for the  
24 Department of Corrections.

25 CHAIRMAN BURTON: You're familiar with, I guess,  
26 the original court order on the Rosenkrantz case?

27 MS. DUNLAP: It has been a while since I've read  
28 it, but I'm somewhat familiar.

1 CHAIRMAN BURTON: What I'm trying to find out is,  
2 who didn't advise the members of the Board when they're hearing  
3 the guy's case, that there's a court order, and the judge says  
4 you've got to do this, and maybe you ought to read this thing  
5 before you decide what you're doing?

6 Or nobody thought it was important.

7 MS. DUNLAP: The Chairman of the hearing panel  
8 was given a copy of the court order, and I believe he read it  
9 prior to the hearing.

10 CHAIRMAN BURTON: He's the guy who wasn't there  
11 because of a death or sickness in the family?

12 MS. DUNLAP: No, that commissioner was present.

13 CHAIRMAN BURTON: I thought that was the one  
14 where you were down --

15 MR. MUNOZ: No, I replaced the second  
16 commissioner on that panel.

17 CHAIRMAN BURTON: And nobody told him?

18 MS. DUNLAP: Apparently, not from what I recall.

19 CHAIRMAN BURTON: Who was the Chairman?

20 MS. DUNLAP: The Chairman of the panel was  
21 Chairman Hepburn.

22 And I believe -- I don't really want to go into  
23 attorney-client privilege discussions on the case, but I believe  
24 we were all in the same room when we discussed the court order,  
25 from my memory.

26 CHAIRMAN BURTON: I don't want to go into  
27 attorney-client stuff.

28 So, we all were --

1 MS. DUNLAP: The hearing panel, the Executive  
2 Officer at the time, and myself.

3 CHAIRMAN BURTON: And it was decided who cared, I  
4 guess? Is that attorney-client privilege, who cared?

5 MS. DUNLAP: I don't believe that was the  
6 decision.

7 CHAIRMAN BURTON: Well, they sure didn't pay any  
8 attention to it, and now they're banged by a District Court of  
9 Appeal. So, somebody obviously didn't think much of it.

10 Now, your job is what? You prepare them for the  
11 hearings? What do the lawyers do?

12 MS. DUNLAP: No, we don't prepare commissioners  
13 for hearings. We basically give opinions on interpretations of  
14 laws, statutes, regulations.

15 CHAIRMAN BURTON: While they're sitting kind of  
16 like this?

17 MS. DUNLAP: We're in-house counsel. We're  
18 scheduled at Headquarters 99 percent of the time. We may get  
19 calls from commissioners from time to time during hearings, in  
20 which they ask our legal opinion about some issue.

21 CHAIRMAN BURTON: On this one, a lawyer happened  
22 to be at the hearing?

23 MS. DUNLAP: Correct.

24 CHAIRMAN BURTON: Because of the court decision?

25 MS. DUNLAP: Correct.

26 CHAIRMAN BURTON: Somebody thought it was  
27 important enough to be there, and somebody asked a question, and  
28 it really didn't matter.



1 MS. DUNLAP: I'm sorry, I didn't hear that last  
2 part.

3 CHAIRMAN BURTON: I would imagine you were there,  
4 where you usually aren't, because of the court decision. But  
5 when it was all over, it's like, I guess, it was, like, don't  
6 worry about the court decision, because nobody did.

7 And he was not given a copy, but it was talked  
8 about. I don't want to get into the conversation. It was  
9 talked about.

10 So, all you do is, and I don't mean it in a  
11 pejorative way, but what you do is, you're back there, and  
12 they'll call.

13 Who is giving them advice on the Americans with  
14 Disabilities Act, anybody?

15 MS. DUNLAP: Basically whatever attorney they  
16 called at the time, along with the Attorney General's Office,  
17 who represents the Board in the case. We're strictly in-house  
18 counsel.

19 CHAIRMAN BURTON: Disabled people were crawling  
20 up the stairs, and blind people were given stuff to read.

21 Did anybody say, maybe this doesn't do the job?  
22 Or if it wasn't your deal, then it wasn't your deal.

23 You're not the Chief Counsel then?

24 MS. DUNLAP: Correct.

25 CHAIRMAN BURTON: You're not Chief Counsel?

26 MS. DUNLAP: No, I'm not.

27 CHAIRMAN BURTON: Who is Chief Counsel?

28 MS. DUNLAP: His name Dan Cossack.



1                   CHAIRMAN BURTON: Maybe we ought to find out from  
2 him what kind of advice he gives, because that was good advice,  
3 too, get a lot of court decisions.

4                   Unless there's other questions of the Committee,  
5 thank you, ma'am.

6                   Witnesses in support.

7                   MR. MUNOZ: Can I scan the room, sir? I want to  
8 see whether they showed up or not.

9                   CHAIRMAN BURTON: Senators Vasconcellos and  
10 Polanco.

11                  SENATOR VASCONCELLOS: I'll go first.

12                  Mr. Chair and Members, I don't think I've ever  
13 before come to oppose a nomination. I'm not naive about what  
14 we're dealing with here, but there's some very serious matters  
15 here that need to be addressed by you and questions.

16                  The letter that Senator Polanco and I have  
17 written to you was written earlier this afternoon, after the  
18 court case came down last Friday, which is, in its character,  
19 fully damning.

20                  I first came across these kind of cases when a  
21 friend of mine, who's a therapist in Silicon Valley, called and  
22 said, "I've got a client who's in prison. Would you learn about  
23 his case."

24                  This guy was a brilliant computer scientist.  
25 Tragically an alcoholic. He tragically killed his common-law  
26 wife in a fit of rage. No excuse.

27                  He had no prior record ever. In prison he's been  
28 an ideal prisoner for 16 years.

1 I read the transcript of the Board of Prison  
2 Terms hearing that said the crime was so bad, and considering  
3 his prior record and his prison record, we deny it.

4 Two things where they had nothing at all. It was  
5 a form, and the format had nothing to do with who he was.

6 And the case here reads similarly. I listened to  
7 Mr. Munoz. I don't know much about him other than what I heard  
8 here today. And if you didn't know about this, or you hadn't  
9 read the opinion, maybe the lack of integrity charge in our  
10 letter is a bit harsh, but we didn't know he didn't know.

11 But he's talking about what sounds like first  
12 degree murder, but the court said it was second; the jury found  
13 second. And the basis for holding a person in is the character  
14 of the crime, and it's also about whether he or she poses a  
15 threat to the general public.

16 This guy, while murder is never acceptable, shot  
17 someone who called him a faggot in front of his parents, and  
18 laughed at him when he was asked to retract. He wasn't going  
19 around shooting people. He had one particular emotional,  
20 painful experience where he reacted, overreacted.

21 But nothing in his record shows that he's a  
22 threat to the general public. His record in prison has been  
23 exemplary. He's got a degree. The DA in L.A. said he wasn't  
24 opposed to parole. Some sheriff said he should get parole. I  
25 mean, the whole record's replete with finding the suitability,  
26 and yet the finding was to the contrary.

27 Then the District Court, in its hearing on  
28 Saturday, I gather you aren't going to vote today, but we have

1 copies of the opinion. I would urge each one of you to read it,  
2 and read how the court has found about the failure to comply  
3 with the law.

4 Mr. Munoz has been part of that group who failed  
5 to comply with the law. I don't expect the Governor to appoint  
6 people who satisfy my concerns or my biases in the area, but I  
7 expect him to appoint people who comply with the law, and whose  
8 actions are informed about the law and meet the law. That's  
9 just basic sense of the job.

10 Anyone of us takes an oath to uphold when we take  
11 a position for the state, that we uphold the law.

12 And the record here of this Board, and this  
13 action, and Mr. Munoz involved, fails that task.

14 This is the one that's public. How many more are  
15 there that aren't public, where someone didn't go to court? How  
16 do we know?

17 But this is the one that's public. The decision  
18 came down last Friday only. It's pretty damning. I urge you to  
19 read it and ask the questions as they've been asked somewhat  
20 even more.

21 And it seems to me that the record does not  
22 support confirmation of this man.

23 SENATOR POLANCO: Mr. Chairman and Members, as  
24 you know, we've had a Joint Select Committee on this subject  
25 matter, Joint Select Committee on Prison Construction and  
26 Operation. We held a hearing, a full day, not dealing with a  
27 specific case per se, but dealing with this whole process, or  
28 lack thereof, of implementing a process as outlined by law.



1                   So, when we hear testimony, and when I hear  
2 testimony from the commissioner before us, who is incorporating  
3 elements of first degree murder, that's left for the judge and  
4 the jury. And there's tendency throughout the hearing, when we  
5 held this hearing, there was a tendency to see time and time  
6 again elements that are not the basis from which these  
7 individuals have been sent to prison, but are the basis for  
8 which decisions are being implemented. And they are, quite  
9 frankly, wrong in doing so.

10                   And we have not seen any corrective action  
11 whatsoever as to correcting that, or through a training program,  
12 letting these commissioners understand that the jury, the judge,  
13 decide a case. And it's those elements of the case that are  
14 brought forth into the correctional system.

15                   In this particular case, the classification of  
16 this individual was a zero, which meant that he was an  
17 exemplary, albeit he committed a crime, and paid his price for  
18 the crime. And the price was a second degree term.

19                   For us then to, for whatever reason, have almost  
20 a knee-jerk constant reaction, or a policy, written or  
21 unwritten, that just deals with individuals such as the case  
22 here, of deniability with no basis whatsoever, or the creation  
23 of basis that is objectionable and would be thrown out --  
24 wouldn't stand in the court at the inception is just wrong.

25                   I'm troubled by what we see. I believe that  
26 individuals who commit these heinous crimes must pay a price,  
27 and there is price to pay. And that is determined by the judge  
28 and the jury. And the sentencing then is brought upon them.



1           And if the sentence was 15 to life, which was, I  
2 believe here, the case, and then you have the judge who did the  
3 case, the district attorney who prosecuted, also coming forward  
4 with letters saying, "Look, this individual is suitable," there  
5 is no basis or evidence to the contrary.

6           We ought not to have a system that just allows  
7 for it to run on automatic pilot on these kinds of cases.

8           So, I'm here to join Senator Vasconcellos in  
9 opposing this nomination on the basis that a court order was  
10 issued. It was not honored. Subsequent court orders were  
11 issued, and I don't think that's the kind of public policy work  
12 that we should be supporting.

13           CHAIRMAN BURTON: Any questions?

14           SENATOR KNIGHT: Question, Mr. Chairman.

15           When a judge gives a twenty to life, does that  
16 mean that he can be paroled any time before twenty years?

17           CHAIRMAN BURTON: I would imagine with good time  
18 credit.

19           SENATOR KNIGHT: So he could, in essence, spend  
20 seven years, as one individual did for a heinous crime?

21           CHAIRMAN BURTON: Yeah, I think he spent seven  
22 years.

23           SENATOR KNIGHT: One other question.

24           During parole hearings, are not the victims there  
25 to testify as well?

26           SENATOR VASCONCELLOS: As I recall, they are  
27 invited to be there, Senator Knight.

28           In this case, as I read the District Court of

1 Appeals decision, the victim's only surviving relative is a  
2 grandmother who supported the parole.

3 CHAIRMAN BURTON: I want to ask a question. I  
4 don't know, Mr. Munoz, if you have the answer to this, or maybe  
5 the attorney can come back, or maybe Senator Presley could  
6 enlighten us.

7 In 1996, Rosenkrantz was found suitable for  
8 parole by a three-member panel. The panel found he committed  
9 his crimes as a result of extreme stress, would not pose an  
10 unreasonable risk to society if released. Model inmate. Job,  
11 blah, blah, blah.

12 Then, in fact, one of the really triggers to his  
13 pulling the trigger when he was disowned by his father, when his  
14 father found out he was gay. The father's long changed his  
15 views about his son.

16 But the panel's finding was overturned after an  
17 internal board review.

18 What is an internal board review?

19 MR. MUNOZ: I think that's referring to the  
20 decision review unit, a review by the decision review unit.

21 CHAIRMAN BURTON: Who are they?

22 MR. MUNOZ: And that, in this particular case,  
23 that unit was comprised of commissioners Giaquinto, and I can't  
24 recall the other gentleman's name, Mancourt.

25 CHAIRMAN BURTON: So, two people overturned three  
26 people?

27 MR. MUNOZ: Yes, sir.

28 CHAIRMAN BURTON: That's kind of a weird way of

1 doing it; isn't it? Is that how it works? If you have three  
2 people that hear something, and then two people that don't can  
3 overturn the three?

4 Bob, is that how that works?

5 SENATOR PRESLEY: We'll get you an answer here in  
6 a minute.

7 MS. DUNLAP: I'm sorry, what was the question?

8 CHAIRMAN BURTON: I asked, when the three-member  
9 panel found basically suitable for parole, then an internal  
10 board review found it wasn't, I just wondered what is the  
11 internal board review?

12 MS. DUNLAP: That can be found in Title XV,  
13 Division 2.

14 CHAIRMAN BURTON: Fine. Why don't you tell me  
15 what it is so I don't have to go look it up?

16 MS. DUNLAP: A decision, a proposed tentative  
17 decision comes up to Board Headquarters. It's reviewed by the  
18 decision review unit, which is made up of the legal unit. A  
19 recommendation is made by the chief counsel to a committee. And  
20 the committee decides whether or not to go with the  
21 recommendation.

22 CHAIRMAN BURTON: What the hell are the lawyers  
23 doing? I mean, all you're supposed to do is say what's legal  
24 and isn't legal, not pass judgment.

25 Was it illegal for the Board, for those three  
26 people, to make a subjective finding that the person was  
27 suitable for parole?

28 MS. DUNLAP: Part of the decision review



1 committee is to evaluate whether or not the information in the  
2 record supports a decision that a commissioner made.

3 CHAIRMAN BURTON: And how do you do that?

4 MS. DUNLAP: Review the record.

5 CHAIRMAN BURTON: What record?

6 MS. DUNLAP: All of the information that we have  
7 concerning the inmate.

8 CHAIRMAN BURTON: In other words, some person can  
9 stand up and, willy-nilly, lie and there's nobody from the  
10 Department of Corrections or the warden, or somebody, saying  
11 that isn't true; the guy was in 15 fights in the last three  
12 days?

13 I mean, I'm missing something.

14 Are the hearings so slipshod?

15 Three people decided something. Some attorneys,  
16 whose job isn't to do that, decide that they ought to stop it,  
17 and overrule it, and send it to somebody else. I don't know if  
18 that's the job of the attorneys.

19 MS. DUNLAP: The attorneys make a recommendation.  
20 They do not make a final decision.

21 CHAIRMAN BURTON: Why would you make a  
22 recommendation overruling them? What did they find?

23 MS. DUNLAP: I don't recall specifically.

24 CHAIRMAN BURTON: Well, I'd like to know. I  
25 would like to know exactly what it is they found.

26 Then they found it, then they go to some other  
27 group, who is --

28 MS. DUNLAP: The decision review committee.



1 CHAIRMAN BURTON: Which committee?

2 MS. DUNLAP: That's made up of three  
3 commissioners designated by the chairman.

4 CHAIRMAN BURTON: So, three people overrule three  
5 people? Not two people overrule three people?

6 MS. DUNLAP: Correct.

7 CHAIRMAN BURTON: Wouldn't that normally be a  
8 push in most life?

9 MS. DUNLAP: I'm sorry, I don't understand the  
10 question.

11 CHAIRMAN BURTON: That's a tie.

12 I would like to know exactly what it is that they  
13 found that led them to second-guess the people, bleeding hearts  
14 not, who decided to set a date; okay? And would like to have  
15 that before this.

16 Any other testimony to come before the Committee?

17 MS. TAYLOR: Thank you, Mr. Chairman and Members  
18 of the Committee.

19 My name is Wendy Taylor. I'm here on behalf of  
20 the California Attorneys for Criminal Justice.

21 We oppose this nomination for two reasons.

22 The first reason is kind of on a general  
23 principle. For the past 10, 15, maybe 20 years, the Governors  
24 of California have always nominated peace officers to the Board  
25 of Prison Terms.

26 If you look at Penal Code Section 5076, it  
27 specifies that appointments to the Board of Prison Terms must  
28 represent a cross section of the population of the State of

1 California. And peace officers are not the only population in  
2 the State of California. So, on that basis, we do oppose this  
3 nomination.

4 The second reason is what's been discussed at  
5 length here today, and that what occurred in the Rosenkrantz  
6 hearing. Mr. Munoz, whether he had a court order or not,  
7 whether he knew about it or not, he was charged with having that  
8 knowledge when he entered into that hearing to make the  
9 determination. And whether he knew it or not, he violated a  
10 court order.

11 As you know the rule of law, it's extremely  
12 important, and he's indicated that, whether through ignorance or  
13 inadvertence, he's willing to ignore the rule of law, we think  
14 that that is a bad, bad policy.

15 And for those reasons, we oppose this nomination.

16 CHAIRMAN BURTON: I mean, with respect, if he  
17 didn't know, although I guess he knew something because the  
18 attorney testified that it was discussed.

19 But if somebody doesn't know anything, you know,  
20 kind of known or should have known isn't the same as driving a  
21 truck into a crosswalk, where you know or should have known you  
22 might run over somebody.

23 I don't know if the known or should have known  
24 applies except for the fact that the attorney said it was  
25 discussed.

26 MS. TAYLOR: Right. My point is that when they  
27 enter into these hearings, they're supposed to be prepared and  
28 have all the relevant knowledge. And a court order certainly is

1 a relevant piece of information that he should have had.

2 CHAIRMAN BURTON: That's what we're going to try  
3 to find out.

4 Anything else? If not, the Committee will be in  
5 recess at the call of the Chair.

6 We will reconvene.

7 Without objection, that material will be made  
8 part of the record.

9 And if you could summarize briefly, sir.

10 MR. GOODMAN: I'm sorry, I am somewhat deaf. I  
11 cannot hear much of what is going on.

12 I came here --

13 CHAIRMAN BURTON: I said, the material will be  
14 made part of the record, and if you could summarize briefly the  
15 material which you gave us, and please proceed, sir.

16 MR. GOODMAN: My name is Richard Goodman. I live  
17 in Oakland, California.

18 And I have been able to do something which you  
19 folks have not been able to do because your duties are so spread  
20 out doing important things on many, many issues.

21 I spent four to five months full time reading  
22 official documents generated by the Board of Prison Terms,  
23 meaning hearing transcripts, psych reports, appeals, rejections  
24 of appeals, and other documents.

25 And I have included four documents there. They  
26 are Friend of the Court brief, which I wrote for some legal  
27 action. And there are two Office of Administrative Law  
28 determinations which I think are extremely relevant to what's



1 going on with Mr. Munoz in the Rosenkrantz case, being simply  
2 symptomatic. And there is a five-page signed statement, signed  
3 by Al Letty, a past member of the Board of Prison Terms, and an  
4 attorney, describing some of the illegalities he felt that the  
5 Board of Prison Terms was engaging in, and which they are still  
6 engaging in.

7 Now, I have hundreds of documents. I have more  
8 proof and evidence than would fill a pickup truck about what  
9 these people are doing. I cannot move in a large office room, I  
10 have so much paperwork.

11 And I summarized this in a letter to Mr. Presley  
12 last August, and took it to his office, and met with him for 40  
13 minutes. And he said he was going to tell the Governor about  
14 this.

15 This is contained in the subcategories in the  
16 Friend of the Court brief, 1 through 15 or so. I think there  
17 were only 13 in the letter that I gave him.

18 So, I have no proof or evidence that Mr. Presley  
19 ever discussed this with the Governor. I phoned his office  
20 several months later a couple of times and got no straight  
21 answer.

22 Now, several weeks after I met with Mr. Presley,  
23 I got a phone call from the FBI, and they were interested in  
24 this matter and wanted to see further evidence. So, I brought  
25 them a box of further evidence. This, I'm sure, is going to  
26 grind through very slowly. I was told it will take several  
27 years, that it will go to whoever is appropriate, and if they  
28 take action, they take action. But they felt that my letter



1 was interesting enough to cause some investigation on some  
2 level.

3 The other thing -- well, there are several points  
4 I want to make. This is time for you folks to do some serious  
5 house cleaning about the Board of Prison Terms. Their abuses  
6 are legion, and I can prove it.

7 But more specifically, what this is caused by is  
8 a lack of nomination of people who are qualified to determine  
9 the state of mind of a prisoner. We have a group of ex-lawmen  
10 and ex-sheriffs, most of whom have not one iota of psychological  
11 training, and who openly in transcripts of Board of Prison Terms  
12 hearings reject the findings of psychiatrists and  
13 psychologists. And I have many examples of this.

14 Tom Giaquinto is probably the worst one. He says  
15 right out open, "Oh, I don't believe that psychiatric report.  
16 Forget it."

17 I have these things in transcripts, official  
18 Board of Prison Term transcripts.

19 Now, it is necessary to start seeing to it that  
20 people who are qualified to the Board of Prison Terms get  
21 appointed, and those who are not qualified do not get appointed  
22 to this Board. We need specialists who know something about  
23 what goes on in the mind of the prisoner.

24 I want just briefly to touch to two particularly  
25 outrageous examples, then I want to tell you what I see as the  
26 consequences to the State of California and the taxpayers of  
27 this. In other words, in about three minutes I'm done.

28 I have -- now, Mr. Munoz gave you a highly

1 idealized version of what goes on at these hearings. He said,  
2 for instance, one of the things they consider is whether or not  
3 an inmate has a job or employment possibilities when he gets  
4 out.

5 Now, this is nonsense. In the Friend of the  
6 Court brief, which you have a copy of, I have quoted one  
7 particular hearing in which a lawyer, representing an inmate  
8 named Jackson, summarized to the three-man board by saying, "You  
9 know, I saw that you had not given this man his parole last time  
10 on the basis of his not having a way to earn a living."

11 And the attorney went on by saying, "Well, he was  
12 a paralegal then. He is still a paralegal. And I looked in the  
13 newspaper today. There were 41 ads, not counting agency ads,  
14 showing, you know, for paralegals, paying \$25-35,000 a year."

15 And I think it was Mr. Giaquinto asked, "Is that  
16 in his C file, Counselor?"

17 And the attorney said, "It is. I put it there  
18 myself."

19 They chit-chatted a little bit. They adjourned  
20 to make their decision. They came back five minutes later and  
21 denied this inmate because he did not have a way to earn a  
22 living.

23 Now, in the amicus brief that you have before you  
24 there is another outrageous example. An inmate who was denied  
25 and who was told by the head of the three-man board, "I think we  
26 need to talk to the CDC about moving you to another facility.  
27 It is clear that you have fallen into a pattern of good behavior  
28 that is not in your best interests," unquote.

1                   So, this is what's going on. Don't be fooled by  
2 these idealized versions of way the Board behaves. You have  
3 the evidence in front of you. I can support any of it with  
4 documents.

5                   I do want to talk about the consequences to the  
6 State of California of the behavior of the Board of Prison  
7 Terms.

8                   You have now probably a Justice Department  
9 investigation somewhere on the horizon. You have at least  
10 seven -- I got a phone call today saying the seventh taxpayer  
11 lawsuit against the State of California has been filed against  
12 the Board of Prison Terms for wasting the taxpayers' money. And  
13 so far as I understand it, the judge in charge has denied every  
14 single motion of the AG's office, and it is proceeding apace.  
15 It will soon be a class action suit.

16                   The sanctions asked range from lawsuit to  
17 lawsuit, maybe some of them it's a hundred dollars a day for  
18 false imprisonment for every day of being imprisoned. Another,  
19 it's \$100 million. Another, it's the repayment to the state of  
20 every single dollar that each one of these commissioners was  
21 paid as salary and as perks and bonuses during the time that he  
22 was illegally acting.

23                   I want you to look at Office of Administrative  
24 Law determinations Number 27, 1999, and Number 41, 1998. These  
25 describe certain actions, and they state, "If these actions are  
26 going on, they are illegal if they were not approved according  
27 to the Administrative Procedures Act."

28                   Well, first of all, these are not real



1 regulations. They are underground regulations which have been  
2 put into effect by the Board of Prison Terms like a Stealth  
3 Bomber movement without us knowing it, and they have been going  
4 on for decades.

5 CHAIRMAN BURTON: Sir, could you please wind up.  
6 We have to get out of the hearing room.

7 MR. GOODMAN: And the consequences of this are  
8 going to be hundreds of millions, if not billions of dollars'  
9 worth of lawsuits against the State of California.

10 So, I ask you, do not confirm another lawmen,  
11 another ex-sheriff. If you believe in the Constitution, if you  
12 believe in the laws of the State of California that you folks  
13 have made, don't confirm people who are not qualified.

14 Thank you very much.

15 CHAIRMAN BURTON: Thank you, sir.

16 Any other testimony to be heard? If not, the  
17 Committee's in recess.

18 [Thereupon this portion of the  
19 Senate Rules Committee hearing was  
20 terminated at approximately 4:47 P.M.]

21 --ooOoo--  
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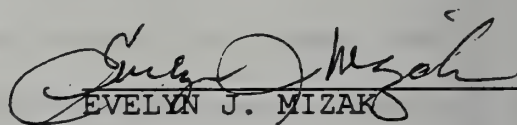
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

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SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR JOE BACA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

SENATOR JACK O'CONNELL

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

JULIE KORENSTEIN, Member  
Board of Governors  
California Community Colleges

RICHARD H. LEIB, Member  
Board of Governors  
California Community Colleges

LESLIE WANG, Member  
Board of Governors  
California Community Colleges

MARCY V. SAUNDERS, Member  
Occupational Safety and Health Appeals Board

TOMAS ALVARADO, Secretary  
Veterans Affairs



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3 State Veterans Board

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5 American Legion, Post 855, Barstow Home

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22 California Latino Medical Association

23 TED BURNETT, Labor Representative  
24 Barstow Veterans Home  
25 California State Employees Association

26 VIRGINIA MARI GOODMAN  
27 California State Employees Association

28 VALERIE WILSON, Employee  
Barstow Veterans Home  
CSEA

GRISELDA BARAJAS, Member  
California Hispanic Chamber of Commerce

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District 13  
2 AmVets

3 SYLVIA E. REYES, Chair  
4 Latina Network  
Sacramento Hispanic Chamber of Commerce

5 LOUIS LOPEZ, Owner  
6 Printwise and Member,  
7 Sacramento Hispanic Chamber of Commerce

8 MICHAEL OROSCO  
9 California League of United Latin American Citizens

10 FRANK RAMIREZ, representing State Commander  
American GI Forum

11 MAURICIO LEIVA  
12 San Joaquin Valley Latino Vote

13 SAMUEL S. ORTEGA, Retired  
14 State Employee

15 JOHN CANFIELD  
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18 DENISE HALL, Employee  
19 Barstow Veterans Home

20 GEORGE MacCLANAHAN, Resident  
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23 JESSE ORTA  
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7 COLONEL FERNANDO V. GANDARA, JR., Victim  
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9 PHILLIS POWERS, former Executive Officer  
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11 ARTHUR BENTON, Past Vice Commander  
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13 J. R. ESTRELLA  
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15 SELSO VARGAS, Former Member  
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: What we are going to do is to get rid of the less controversial matters first. So, Julie Korenstein, Board of Governors, California Community Colleges. Go ahead, please.

MS. KORENSTEIN: Thank you very much.

Good afternoon. My name is Julie Korenstein. I've recently been appointed to the Board of Governors by Governor Gray Davis. As a matter of fact, today is my second Board of Governors meeting.

I've been involved in education for the past 30 years, either as a parent raising my own three children, volunteering in their classrooms, as well as being a classroom teacher, having received both my elementary and my secondary credentials.

I also ran my own private tutorial services, primarily working with students who had dropped out of school. And I actually put together a very special high school program, Exploratory Community Services, and I established that program over 13 years ago, before anyone really examined the importance of community services in our schools.

And I'm very pleased and excited about the new position of Board of Governors. I believe that everything that I have accomplished has really helped me to arrive where I am today.

I have also been on a board of education for the past 13 years.

1           My greatest interests are in the following areas.

2   Number one, improving the transfer rate. We, as the Board of  
3   Governors, must aggressively encourage our community colleges to  
4   ensure that a greater number of our students go on to get their  
5   Bachelor's Degree at the UC and CSU system.

6           I want to see the expansion of classes our high  
7   school students take that are taught by our community colleges.  
8   I believe by doing this, we will help to encourage students to  
9   go on to community colleges upon graduation. And this will also  
10   help to enhance the transfer rates to our CSU and UC systems.  
11   By doing this, we will help to open horizons for many students,  
12   because college will be more affordable. And for many of our  
13   students coming from cultures of poverty, this will enhance  
14   their opportunities for success.

15           I'm also a great supporter of vocational  
16   education programs. By doing so, we help to prepare the vast  
17   majority of community college students in the skills and  
18   training which prepare them to move into the work force and  
19   become productive citizens. It is extremely important for our  
20   students to gain viable skills that will enhance their ability  
21   to earn a living for themselves and for their families.

22           I'm very interested in helping the transition of  
23   individuals who have been on welfare move into the work force.  
24   For many, attending our community college may be their only  
25   opportunity to change their lives and be able to have another  
26   chance. The majority of people who are on welfare are women  
27   with children, and so by helping them become trained in a skill  
28   or a profession, we not only help to break the cycle of poverty,



1 but we also help the children who desperately need a chance to  
2 survive in a more nurturing environment.

3 We must also make every effort to work with the  
4 business community and understanding what their needs are in  
5 terms of employment so that we establish programs that help the  
6 economic development of communities.

7 Our community colleges play an important role in  
8 remedial education for students who need additional help. But  
9 of paramount importance to me, and of great concern to me, is  
10 really helping to encourage students to become teachers. We  
11 have a very serious teacher shortage in the State of  
12 California. The projections are that we will need approximately  
13 27,000 teachers each year for next 10 years, 270,000 teachers.  
14 We need to aggressively attract the very best students and help  
15 them, encourage them, to become our teachers. What better place  
16 than our community colleges.

17 These are some of the areas of interest that I  
18 have. I am very pleased and excited, and hopefully will get the  
19 confirmation so I can continue on with many of the ideas, and  
20 areas, and issues that I've been working on.

21 Thank you very much.

22 CHAIRMAN BURTON: Thank you.

23 The Community College Board of Governors can  
24 raise students fees for neediest students, but they still don't  
25 have, many of them wouldn't have enough money to live on while  
26 they're going to school.

27 Do you have any idea what strategies the Board  
28 should pursue to help pay for living expenses in order to



1 increase their education?

2 MS. KORENSTEIN: Right.

3 I think it's very difficult to really go about  
4 increasing the amount of money students pay. The community  
5 college system, we have a lot of students that are working  
6 people, and they don't have the really financial opportunities  
7 and resources.

8 There are grants that the Community College Board  
9 of Governors gives out to students. There's also, I think, a  
10 current bill that will help to increase or help give money  
11 towards students for their books, which I think is going to be  
12 very important.

13 Our greatest hope is to be able to give  
14 opportunities to these people that are in our community college  
15 system. And we have to find a variety of different ways to give  
16 economic support.

17 CHAIRMAN BURTON: Do you have any ideas?

18 MS. KORENSTEIN: Well, I was just mentioning,  
19 there are grants that the Board of Governors --

20 CHAIRMAN BURTON: And three percent of the  
21 students get them.

22 MS. KORENSTEIN: Right, that's true.

23 CHAIRMAN BURTON: Which means 97 percent don't.

24 MS. KORENSTEIN: Right. I would certainly look  
25 at expanding the grants that the Board of Governors give out.

26 And I think that legislatively having sources of  
27 funding for additional monies for textbooks is very important  
28 for our community college students.

1                   So, those are the two areas that I think can be  
2 very helpful, as well as the support groups in terms of having  
3 child care programs and other services through care.

4                   CHAIRMAN BURTON: Senator Lewis.

5                   SENATOR LEWIS: The Little Hoover Commission had  
6 recently issued a report on the state of community colleges.  
7 They issued a number of interesting findings.

8                   One of them was that almost 20 percent of the  
9 students enroll in a class but don't finish. And then their  
10 recommendation for that is that there be a gradual increase in  
11 the student fees for the students who do that, and then perhaps  
12 use that money to give a greater break to those who are diligent  
13 in their studies.

14                  What do you think about an approach like that?

15                  MS. KORENSTEIN: I did go through the report.  
16 What I would really like to see is a statistical evaluation of  
17 the type of student that does not complete, and why they don't  
18 complete their course work. Is it because they're just playing  
19 around, and they have no better interests than to really stay in  
20 college and be a serious student? Are they discontinuing for a  
21 period of time because they have to hold a full-time job to  
22 support a family?

23                  I think there's a -- there are many different  
24 types of students.

25                  I guess what the report was saying, that students  
26 that tend to not complete courses -- and I don't know if they  
27 mean one time or a percentage of times -- that they be, in some  
28 way, held responsible, and I guess it's sort of a punishment.

1 You know, you take money and you give it to students that are  
2 more serious.

3 But I would really have to evaluate who we're  
4 talking about. It wasn't clear in the report, more  
5 specifically.

6 SENATOR LEWIS: Questions, Members of the  
7 Committee? Senator Hughes.

8 SENATOR HUGHES: Hi, how are you?

9 MS. KORENSTEIN: Fine, thank you.

10 SENATOR HUGHES: I'd like to know how many  
11 students are really part of the inter-segmental general  
12 education transfer curriculum? How do students get to know  
13 about this?

14 Because some students get to know everything  
15 because they have good connections, they have friends who are in  
16 the transfer program, and others never, ever hear anything about  
17 it.

18 What kind of outreach do you have on the campuses  
19 themselves to find out how they can get such courses?

20 MS. KORENSTEIN: Senator Hughes, it's -- being  
21 that I'm relatively new to this position, there's a great deal  
22 that I'm in the process of learning.

23 We have to make an aggressive attempt to make  
24 sure that students are clearly aware of the transfer policies,  
25 and whatever we can do to help move them along.

26 But in order to tell you percentages, and all of  
27 that, I still need a lot of homework.

28 SENATOR HUGHES: No, I didn't mean percentages.



1 I'm just wondering how do students really find  
2 out about it? Do you have counselors that are available to  
3 students in the sense of more of your students are more mature  
4 and are older students. They're more dedicated to trying to  
5 work and go to school. And they think that they need to stay  
6 there and get that AA Degree, when really, some of them need to  
7 have their sights raised to a higher level.

8 MS. KORENSTEIN: Absolutely. As a matter of  
9 fact, we just today, the Chancellor from the community college  
10 system, as well as the CSU system, signed a memorandum of  
11 understanding to increase the transition rate, the transfer  
12 rate. And we have already done that with the UC system as  
13 well.

14 It has to be a very cooperative venture, and we  
15 do have to make sure that the counselors are spending the time  
16 and providing the information.

17 I know we all just received posters that the  
18 community colleges will be putting up in terms of the  
19 transferring over to the USC system. So, we have to make sure  
20 the students understand and know, because ultimately, we want  
21 them to go on and get Bachelor's Degree. We want them to be  
22 able to go into fine professions and make good livings for their  
23 families and for themselves.

24 So, it's going to have to be a very aggressive  
25 job on our part.

26 SENATOR HUGHES: Thank you.

27 CHAIRMAN BURTON: Senator Knight.

28 SENATOR KNIGHT: Thank you, Mr. Chairman.



1                   Recent figures indicate that only about three  
2 percent of the community college students transfer to a  
3 four-year school.

4                   Can you hear all right?

5                   MS. KORENSTEIN: Thirty percent of the students  
6 go on to a --

7                   SENATOR KNIGHT: No, only three percent of the  
8 community college students transfer to a four-year institute.

9                   Does that indicate, and I think rightfully so,  
10 maybe, what some of us are thinking, that the community college  
11 is more of a vocational school and satisfies that niche in  
12 providing a vocation for people to make a living after they come  
13 out of high school?

14                  MS. KORENSTEIN: I think, if I heard your  
15 question correctly, you were saying, should our community  
16 colleges be looked at as a vocational school if we're only  
17 transferring only 3 percent on to the CSU and UC system.

18                  I think the community colleges can play many  
19 roles, many roles. It can be vocational, but we also want to  
20 give students the opportunity to go on to get their Bachelor's  
21 Degree.

22                  Like I said before, we have to make an aggressive  
23 attempt to encourage them to go on. Many of our students are  
24 coming out of cultures of poverty. They can't often afford to  
25 go on to UC or CSU systems. This gives them the opportunity for  
26 the first two years at a lower cost.

27                  SENATOR KNIGHT: What percentage would you think  
28 would be acceptable, then, for community college students to go

1 on to higher learning?

2 MS. KORENSTEIN: I mean, my dream and my wish  
3 would be, there would be a minimum 50-50. That 50 percent would  
4 be going for getting their certificate in terms of voc. ed., and  
5 50 percent would transfer on. That's what I would like to see.

6 SENATOR KNIGHT: Is that 50 percent of the  
7 students coming right out of high school, or 50 percent of the  
8 overall population of the community college?

9 MS. KORENSTEIN: I would say out of the overall  
10 community college. That would be my desire.

11 CHAIRMAN BURTON: Senator O'Connell.

12 SENATOR O'CONNELL: No questions.

13 CHAIRMAN BURTON: Witnesses in support.

14 Witnesses in opposition.

15 Do you have anybody to introduce?

16 MS. KORENSTEIN: No.

17 SENATOR HUGHES: I'd like to move the nomination.

18 CHAIRMAN BURTON: Moved by Senator Hughes. Call  
19 the roll.

20 SECRETARY WEBB: Senator Hughes.

21 SENATOR HUGHES: Aye.

22 SECRETARY WEBB: Hughes Aye. Senator Knight.

23 SENATOR KNIGHT: Aye.

24 SECRETARY WEBB: Knight Aye. Senator O'Connell.

25 SENATOR O'CONNELL: Aye.

26 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

27 SENATOR LEWIS: Aye.

28 SECRETARY WEBB: Lewis Aye. Senator Burton.

1 CHAIRMAN BURTON: Aye.

2 SECRETARY WEBB: Burton Aye. Five to zero.

3 CHAIRMAN BURTON: Ayes five, noes none,  
4 congratulations.

5 MS. KORENSTEIN: Thank you very much.

6 CHAIRMAN BURTON: Rich Leib.

7 SENATOR O'CONNELL: Mr. Chairman, I just wanted  
8 to state, as Mr. Leib comes forward, he's been a personal friend  
9 of mine for 20 years. He's a graduate of UC Santa Barbara. His  
10 mother's a teacher, I think just recently retired from Los  
11 Angeles.

12 Rich used to work for Senator Hart, Senator  
13 Rosenthal, and very active in the high technology.

14 CHAIRMAN BURTON: Are you recusing yourself?

15 SENATOR O'CONNELL: -- high technology, and he's  
16 just a great appointment.

17 I just wanted to lend that personal introduction,  
18 long-time friend.

19 MR. LEIB: Thank very much. I appreciate that.

20 I won't take up too much time, but I'd certainly  
21 be happy to answer any questions.

22 As Senator O'Connell stated, I'm a product of the  
23 public school, having attended Hamilton High School and also UC  
24 Santa Barbara. And my mother was a teacher at Venice High  
25 School for 25 years, and I've always been a strong believer in  
26 the public education system.

27 And when I got out of college, my first job was  
28 with State Senator Gary Hart, and working on -- as an



1 administrative or legislative aid.

2           So, I've always had that interest, and I'm  
3 looking very much forward to the community colleges. I think  
4 it's an institution that has great potential, and I think that  
5 we're seeing a board that is going to be very pro-active and  
6 work closely with the Legislature. And fortunately, we have  
7 strong support in the Legislature on the community colleges, and  
8 I hope to just continue with that, and answer any questions you  
9 may have.

10           And I thank you very much, Senator O'Connell.

11           CHAIRMAN BURTON: Well, I guess it's not fair to  
12 ask the newer members, but there's some concern with the fact  
13 that we made the community colleges, I guess, the repository for  
14 the Welfare to Workforce Investment Act.

15           Do you know, Rich, do you know how that works?  
16 Do they coordinate with other people, or are they just like the  
17 typical, and they just operate the thing totally themselves? Do  
18 you have any idea how that works?

19           MR. LEIB: It hasn't actually been an issue.  
20 We've heard some discussion at the previous Board meeting about  
21 that issue. And clearly, it's something that has been talked  
22 about a lot in the press; there's been some interest in it.

23           We haven't dealt that closely with it. It's  
24 certainly some issue I'm interested in, in making sure that  
25 we're able to work closely with the various entities and have  
26 people graduate.

27           I think what the most important thing about the  
28 Welfare Back to Work Program is to make sure we get good



1 education, and I think that the community college is one area  
2 where they can do it.

3 I don't have a lot of experience with it, but  
4 it's certainly an issue that I think's important and emerging.

5 CHAIRMAN BURTON: Senator Lewis. Senator Hughes.

6 SENATOR HUGHES: I have some statistics here that  
7 say about 96,000 students in community colleges statewide were  
8 on welfare, yet they did not apply for financial assistance.

9 How are you going to get the message out there?  
10 I know it's like people who are on welfare don't want to be  
11 rejected again by society and hold their hands out, but yet and  
12 still, they want to better their conditions.

13 How are you, as a trustee, going to make certain  
14 that students know it's their right to apply for assistance if  
15 they want to finish community college and even go on to other  
16 education? If they could reach their academic goal right in the  
17 community college, that there's some way that they could be  
18 entitled to some grant? How do you get that information out?

19 And as a new member, I'm sure you have some  
20 creative ideas.

21 MR. LEIB: Well, I do think that getting the  
22 information out is one of the great -- or the lack of getting  
23 the information out is one of the great frustrations that are  
24 faced by community college students as well as in other  
25 educational institutions.

26 There is a lack of information, not only on that,  
27 but on their ability to gain funding. And I know, for example,  
28 one of the things we're interested in is support of measures for

1 the expansion of the Cal Grant Program, B Program, that Senator  
2 Burton has authored, and it's something that we are in favor  
3 of.

4 But I think that, you know, having the  
5 information, I mean, having that ability, you still have to be  
6 able to get out the information. And, you know, in this  
7 generation, with the computers and e-mail and so forth, there  
8 has to be some creative solutions to that, because a lot of  
9 people just don't have the information.

10 I don't have the answers to it, but I understand  
11 the concern that you have, and I'd certainly be interested in  
12 trying to do something about it.

13 SENATOR HUGHES: Yes, when you talk about e-mail,  
14 it's just not enough to say, I love you, but maybe it should  
15 say, these are where you can get financial aid.

16 So, maybe the community colleges ought to start  
17 thinking about that kind of virus invading the e-mail.

18 CHAIRMAN BURTON: Senator Knight. Senator  
19 O'Connell.

20 SENATOR O'CONNELL: I'd like to move the  
21 nomination.

22 CHAIRMAN BURTON: Do you have witnesses in  
23 support?

24 MR. LEIB: I had my one witness in support.  
25 I'm resting my whole nomination on Senator O'Connell.

26 CHAIRMAN BURTON: Call the roll.

27 SECRETARY WEBB: Senator Hughes.

28 SENATOR HUGHES: Aye.

1 SECRETARY WEBB: Hughes Aye. Senator Knight.

2 SENATOR KNIGHT: Aye.

3 SECRETARY WEBB: Knight Aye. Senator O'Connell.

4 SENATOR O'CONNELL: Aye.

5 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

6 SENATOR LEWIS: Aye.

7 SECRETARY WEBB: Lewis Aye. Senator Burton.

8 CHAIRMAN BURTON: Aye.

9 SECRETARY WEBB: Burton Aye. Five to zero.

10 CHAIRMAN BURTON: Congratulations.

11 MR. LEIB: Thank you very much.

12 [Thereupon the Senate Rules

13 Committee acted upon legislative

14 agenda items.]

15 CHAIRMAN BURTON: Leslie Wang.

16 MS. WANG: Good afternoon. As you know, my name  
17 is Leslie Wang. It's actually spelled "Wang" but pronounced  
18 "Wong."

19 CHAIRMAN BURTON: I apologize for pronouncing it  
20 "Wang."

21 MS. WANG: It's all right. It's a battle I've  
22 been fighting my entire life.

23 As you know, my name is Leslie Wang. I'd like to  
24 tell you a little bit about myself and what I bring to the  
25 Board of Governors.

26 I've lived in the Central Valley for 26 years, 25  
27 of that in Stockton, and last year I moved to Galt.

28 I've been working at the San Joaquin Delta



1 Community College District since 1980. I was hired as a library  
2 assistant, and now I'm a media specialist, and this is the  
3 position I currently hold.

4 As you can see, I have a very long history in the  
5 community college system. I was there for Prop. 13, and I saw  
6 the effects of that. And I was also there to see the effects of  
7 AB 1725.

8 I've been very active for several years in  
9 participatory governance, and I've been an advocate for  
10 classified professionals through my committee work with the  
11 California School Employees Association, on the statewide  
12 Community College Committee.

13 I've also been a student at the community  
14 college, so I've had the experience first-hand of standing in  
15 line and going through the registration process, and paying  
16 those big bucks for the textbooks.

17 But I do have to say that I like the new system  
18 of registration now on the Internet much better. It's much  
19 easier.

20 And I have had the opportunity to work very  
21 closely with students and faculty, and classified and  
22 administrators.

23 Very briefly, just one thing that I've noticed  
24 about the students of today. They have different expectations.  
25 They're very much more sophisticated in what they want from  
26 their educations at the community college. They don't have a  
27 lot of time. They all work. They have family obligations. And  
28 so, they need a different type of delivery for their classroom



1 education. Some of it's technology based; some of it's distance  
2 education.

3 And I bring that up because that's the field that  
4 I work in. And years ago, state of the art was a tv and VCR.  
5 Now it's multi-media presentation systems, distance education  
6 through video conferencing over the T-1 lines through the 4-C  
7 Net video bridge, and numerous other means of access. That's  
8 really what it's about.

9 I think we need to be very sensitive to the types  
10 of learning styles that our students have, and we need to  
11 provide them access so that they have the opportunity to take  
12 advantage of the community college education, whether their goal  
13 is to transfer or to get into the workforce.

14 The colleges, college system, has responded as  
15 well as it could to these new demands, despite the challenges of  
16 limited funding in the past decade. But I'm optimistic that the  
17 next decade will see some improvement.

18 Rather than continue on, I'll just ask you if you  
19 have some questions of me, and I'll do my best to answer them.

20 CHAIRMAN BURTON: Senator Lewis.

21 SENATOR LEWIS: No questions.

22 CHAIRMAN BURTON: Senator Hughes.

23 SENATOR HUGHES: No questions.

24 CHAIRMAN BURTON: Senator Knight.

25 SENATOR KNIGHT: I was going to ask a question.

26 I had heard in Cal State University at Northridge  
27 that they're asking measles vaccine and Rubella vaccine before  
28 students, proof of it, before they can be registered in the next

1 quarter or next semester.

2 Do you have any of those requirements within the  
3 community college district?

4 MS. WANG: Not that I'm aware of. I do know that  
5 the employees do have -- are required are to take a tuberculosis  
6 test every -- I believe it's every four years.

7 SENATOR KNIGHT: Who is that?

8 MS. WANG: The employees.

9 SENATOR KNIGHT: But you don't have any  
10 requirement on students?

11 MS. WANG: Not that I'm aware of.

12 SENATOR KNIGHT: Okay, thank you.

13 CHAIRMAN BURTON: Senator O'Connell.

14 SENATOR O'CONNELL: I'll move the nomination.

15 CHAIRMAN BURTON: Witnesses in support?  
16 Witnesses in opposition.

17 Moved by Senator O'Connell. Call the roll.

18 SECRETARY WEBB: Senator Hughes.

19 SENATOR HUGHES: Aye.

20 SECRETARY WEBB: Hughes Aye. Senator Knight.

21 SENATOR KNIGHT: Aye.

22 SECRETARY WEBB: Knight Aye. Senator O'Connell.

23 SENATOR O'CONNELL: Aye.

24 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

25 SENATOR LEWIS: Aye.

26 SECRETARY WEBB: Lewis Aye. Senator Burton.

27 CHAIRMAN BURTON: Aye.

28 SECRETARY WEBB: Burton Aye. Five to zero.

1 CHAIRMAN BURTON: Congratulations.

2 MS. WANG: Thank you.

3 CHAIRMAN BURTON: Marcy Saunders, Occupational  
4 Safety and Health Appeals Board.

5 MS. SAUNDERS: My name is Marcy Saunders. I  
6 reside in San Mateo County.

7 I have been before you before. I'm not going to  
8 bore you with my background, since most of you have heard my  
9 background before.

10 I guess the best thing I could say is that I was  
11 the Labor Commissioner for the State of California and have  
12 since resigned. And as you know, the Governor's now appointed  
13 me to the Cal-OSHA Appeals Board, of which I do have some  
14 background because I do come from somewhat of a construction  
15 background for 15 years, where we were working with Cal-OSHA on  
16 many issues. And then also in the year that I was Labor  
17 Commissioner, I also worked pretty closely with the Cal-OSHA  
18 Division.

19 And I will tell you that I do look forward, if I  
20 am confirmed, to working on the State Appeals Board.

21 Thank you.

22 CHAIRMAN BURTON: Senator Lewis.

23 SENATOR LEWIS: You were confirmed by the Senate  
24 to the post of Labor Commissioner last year; correct?

25 MS. SAUNDERS: Yes.

26 SENATOR LEWIS: Then this past March, you  
27 resigned from that post?

28 MS. SAUNDERS: Yes, I did.



1                   SENATOR LEWIS: Can I ask why you chose to  
2 resign?

3                   MS. SAUNDERS: Yes. I took the job extremely  
4 seriously. It was very, very time consuming. I did not realize  
5 just how time consuming it was going to be.

6                   I was newly married. I very rarely ever saw my  
7 husband. We had a long conversation about this.

8                   And whenever I take on any type of position, I  
9 try to do it as well as I possibly can.

10                  I was so involved in that position, trying to  
11 turn things around within the division. And I think that I did  
12 some very, very good things in the year that I was there.

13                  But I just felt that it needed to have someone in  
14 that position that could give it the 60 to 80 hours a week that  
15 I was doing.

16                  SENATOR LEWIS: So, it's been your experience so  
17 far that the OSHA Appeals Board is less time consuming?

18                  MS. SAUNDERS: It is less time consuming. It  
19 does not have 500 employees and 22 offices statewide, to begin  
20 with.

21                  SENATOR LEWIS: Can you shed some light on this  
22 controversy? I guess there's been a lot of rumors flowing about  
23 something that transpired with the Bank of America?

24                  MS. SAUNDERS: Yes, there are a lot of rumors  
25 flying, aren't there?

26                  Not really. I really don't have anything I could  
27 comment on that, except that, as Labor Commissioner, I abided by  
28 what the state laws were, and suggested to Bank of America that



1 they change their program.

2 SENATOR LEWIS: Which program was that?

3 MS. SAUNDERS: There was a program they were  
4 asking their employees to volunteer to clean up the ATMs on  
5 their own time and purchase the tools themselves.

6 SENATOR LEWIS: And you felt that that deserved  
7 overtime, I take it?

8 MS. SAUNDERS: Yes. As long as they were  
9 nonexempt employees, the law reads that they have to be paid for  
10 all hours that they work.

11 SENATOR LEWIS: Did the Governor share your  
12 opinion in that regard?

13 MS. SAUNDERS: I don't know. I never talked to  
14 the Governor directly about that.

15 SENATOR LEWIS: And the Governor didn't ask you  
16 to resign?

17 MS. SAUNDERS: No, I resigned.

18 SENATOR LEWIS: One of the functions of a member  
19 of the OSHA Appeals Board is the ability to appoint and hire  
20 administrative law judges.

21 What's going to be your criteria in terms of  
22 hiring those people?

23 MS. SAUNDERS: I don't think that that's a  
24 question that I can honestly answer right now. I'm still  
25 learning about Cal-OSHA Appeals Board. I've only attended three  
26 meetings so far. I'm still just learning the laws, what the  
27 past policy of the Board has been. And in fact, I'm just  
28 beginning to learn the names of our administrative law judges

1 and our attorneys.

2 SENATOR LEWIS: Are you going to insist that the  
3 appointees share a common philosophy with you?

4 MS. SAUNDERS: I'm only one of a three-member  
5 board. And I would expect that whoever is hired by the Board  
6 would want to share the philosophy with the Board as a whole.

7 SENATOR LEWIS: Very Davis-like.

8 CHAIRMAN BURTON: Do they come off a list, those  
9 administrative law judges?

10 MS. SAUNDERS: Yes, they do.

11 CHAIRMAN BURTON: Senator Hughes.

12 SENATOR HUGHES: You're aware of the number of  
13 complaints that we have about dangerous molds being discovered  
14 under private homes, and especially the number of dangerous  
15 molds that have been discovered in state buildings.

16 SENATOR KNIGHT: Moles?

17 SENATOR HUGHES: Molds. Things that make you  
18 sick, m-o-l-d-s. Sorry, it's my Eastern accent.

19 And I was wondering, what is your division going  
20 to do, if anything, about looking into this? Because I have  
21 some friends who bought a beautiful house about four or five  
22 years ago, and then discovered they had these molds under their  
23 home, and they had to vacate.

24 And there have been complaints from state  
25 employees about conditions that they might have gotten from  
26 molds associated from state buildings.

27 Are you going to look into that, or is your  
28 agency looking into it?

1 MS. SAUNDERS: Well, first of all, I'd have to  
2 find out if that issue's under our agency's purview, because I'm  
3 not positive that it is.

4 But if it was under our purview, then of course,  
5 I would think we would look into that.

6 SENATOR HUGHES: But it says, Occupational Safety  
7 and Health. And I would imagine that someone would probably  
8 come to your Board to render a claim.

9 Don't you think it might be?

10 MS. SAUNDERS: Yes, there's a very good chance  
11 that if that was a problem in a building, and it was causing a  
12 problem, that we would probably get a complaint, which would go  
13 to the Division first.

14 Then the Division would look into that issue, not  
15 our Board per se, but the Cal-OSHA Division would look into it.  
16 And then, whatever the Division decided as to whether or not  
17 they were going to cite the people that owned the building, or  
18 the employer, or whatever, then at that point, the employer has  
19 the right to appeal that to our Division, and then we, at that  
20 point, would have an opportunity to look into it.

21 SENATOR HUGHES: Are you concerned about it?

22 MS. SAUNDERS: Of course.

23 SENATOR HUGHES: I'm very concerned about it  
24 because of the number of people that I know who work for the  
25 state, and the number of people I know that go in and out of  
26 these buildings.

27 I hope you get even more excited about it,  
28 because it's really a scary situation.



1 MS. SAUNDERS: I promise you that within what is  
2 my legal rights to do, I will talk to the Division about that.

3 SENATOR HUGHES: And find out. Thank you.

4 MS. SAUNDERS: You're welcome, Senator Hughes.

5 CHAIRMAN BURTON: Witnesses in support?  
6 Witnesses in opposition.

7 SENATOR HUGHES: Move the nomination.

8 CHAIRMAN BURTON: Moved by Senator Hughes.

9 Do you have anybody around you want to introduce  
10 to the Committee?

11 MS. SAUNDERS: My husband, Gary Saunders.

12 CHAIRMAN BURTON: Another question from the good  
13 Senator.

14 SENATOR LEWIS: Thank you, Mr. Chairman.

15 The Federal Labor Department had put forth an  
16 advisory, saying employers were responsible for working  
17 conditions at home. And then there was a large protest about  
18 that. The advisory was withdrawn.

19 But Chief Counsel for OSHA has said that, "The  
20 portion of the home where work is carried on must be in  
21 compliance with the California Occupational Safety and Health  
22 Act."

23 To your knowledge, has any person who's working  
24 at home ever turned himself in?

25 MS. SAUNDERS: Well, again, to be very, very  
26 honest with you, I have not been sitting on the Board that  
27 long. I've only had three hearings.

28 And at this point, I would have to say I have no



1 idea whether anybody has or not. I'd have to go back and find  
2 out.

3 CHAIRMAN BURTON: Moved by Senator Hughes. Call  
4 the roll.

5 SECRETARY WEBB: Senator Hughes.

6 SENATOR HUGHES: Aye.

7 SECRETARY WEBB: Hughes Aye. Senator Knight.

8 SENATOR KNIGHT: Aye.

9 SECRETARY WEBB: Knight Aye. Senator O'Connell.  
10 Senator Lewis.

11 SENATOR LEWIS: Aye.

12 SECRETARY WEBB: Lewis Aye. Senator Burton.

13 CHAIRMAN BURTON: Aye.

14 SECRETARY WEBB: Burton Aye. Four to zero.

15 CHAIRMAN BURTON: Hold the roll open for Senator  
16 O'Connell.

17 Thank you, Marcy, and congratulations.

18 Are you term or pleasure on this one?

19 MS. SAUNDERS: I'm term.

20 Thank you everyone.

21 [Thereafter, SENATOR O'CONNELL  
22 added his Aye vote, making the  
23 final vote 5-0 for confirmation.]

24 CHAIRMAN BURTON: Tomas Alvarado, Secretary,  
25 Veterans Affairs.

26 Mr. Alvarado.

27 SENATOR SOLIS: Good afternoon, Mr. Chair.

28 CHAIRMAN BURTON: Senator Solis, you're here on

1 this item?

2 SENATOR SOLIS: Yes.

3 I am happy to be here to present Mr. Tomas  
4 Alvarado, who has been nominated as Secretary for the California  
5 Department of Veterans Affairs.

6 He's been a long time friend and activist out in  
7 the East Los Angeles area in terms of helping to provide  
8 assistance to veterans and to our community.

9 And I stand here as someone who has known him in  
10 the last few years and worked with him this past year, during  
11 month of December, particularly at the Barstow Home, when I and  
12 staff went out and took a visit, reviewing what some of the  
13 issues were there. And came to see that there were some much  
14 needed reforms that were needed, and saw that he took the bull  
15 by the horn and did what he needed to do to help provide those  
16 kinds of reform efforts.

17 So, I'm here to say that he's someone that I  
18 think has demonstrated his courage and his commitment to his  
19 community, and I think will do a continued good job for us  
20 serving as Secretary for the California Department of Veterans  
21 Affairs.

22 I also have a letter that I believe many of you  
23 have seen from Congresswoman Lucille Roybal Allard, who also  
24 represents the East Los Angeles area, and also joins with us in  
25 support in confirmation for Mr. Tomas Alvarado.

26 MR. ALVARADO: Thank you very much, Senator  
27 Solis.

28 Good afternoon, Mr. Chairman and Members. Thank

1 you for this opportunity to come before you this afternoon to  
2 respond to any questions, issues, or concerns you may have  
3 regarding the administration of the Department of Veterans  
4 Affairs since my appointment.

5 First, Mr. Chairman, with your permission, I  
6 would like introduce my wife, Christina, and daughter, Miranda,  
7 sitting right behind me. Both my wife and Miranda have had an  
8 interesting learning process this last year or so. So, I really  
9 appreciate their support for me, and all the long hours, and  
10 nonexistent weekends that I've not been home and being on the  
11 road.

12 Although I'd like to introduce all of my  
13 supporters here today, however, in the interest time, I think  
14 their mere presence is sufficient. I thank them all for the  
15 demonstrations of support and confidence this afternoon.

16 I would, however, like to introduce specific  
17 persons, Mr. Chairman, who would like to comment in support of  
18 my confirmation, if it's okay with you, sir.

19 John Fitzke, past Commander for the Veterans of  
20 Foreign Wars and Vice Chairman of the California Veterans Board,  
21 is here representing our state Department Commander.

22 Bill Jackson, representing the Barstow Home and  
23 the State Commander of the --

24 CHAIRMAN BURTON: Well, I tell you how we do it.  
25 You testify. We ask questions. We ask for support, they'll  
26 come up.

27 MR. ALVARADO: All right, yes, sir.

28 CHAIRMAN BURTON: You can stay there, sir.



1                   MR. ALVARADO: Mr. President and Members, I hope  
2 that you had the opportunity to review baseline report delivered  
3 to your office March 31st of this year. The information  
4 contained in this package was to serve as a sample for some of  
5 the problem areas we discovered, how they were resolved, and  
6 generally the progress that has been made since my appointment  
7 as Secretary.

8                   And as requested by your staff, I also provided  
9 you and the Members of this Committee with an additional  
10 document which provides a framework for some of my intended  
11 short and long term goals.

12                  Mr. President, over the past three decades, I  
13 have been committed to improving the quality of health care and  
14 enhancing benefits for veterans and their dependents,  
15 particularly disabled combat veterans. After nearly 30 years of  
16 professional and volunteer service to this cause, I am committed  
17 and continue to apply the same tenacious energy I exercised as a  
18 student organizer for veterans at San Jose State.

19                  I want to dismiss all and any doubt that the  
20 veterans in our homes are being neglected or abused. I have  
21 personally engaged in a pro-active role in this effort, and I  
22 will continue to do so.

23                  I will not allow this agency to lose sight of our  
24 commitment to the men and women who served, as well as their  
25 dependents.

26                  I want to assure you, Mr. Chairman and Members,  
27 that this agency is staffed by professional and competent  
28 employees that genuinely care about the veterans we are charged



1 to assist.

2 Lastly, any statements, rumors, or hearsay should  
3 be viewed or handled cautiously. I know there's a number of  
4 things that have been circulated, and I hope that they are  
5 viewed with some degree of caution.

6 In this regard, Mr. Chairman and Members, I hope  
7 that the testimony you'll receive from me today will provide you  
8 with the necessary information you need to recommend approval of  
9 my confirmation to the full Senate.

10 Thank you.

11 CHAIRMAN BURTON: Senator Lewis.

12 SENATOR LEWIS: Mr. Alvarado, I understand that  
13 the Barstow Veterans Home recently passed its last DHS  
14 inspection?

15 MR. ALVARADO: That is correct.

16 SENATOR LEWIS: But there are still some areas  
17 that are outside of compliance. Do you recall what the major  
18 ones out of compliance were?

19 MR. ALVARADO: Yes, sir.

20 SENATOR LEWIS: What steps are being taken?

21 MR. ALVARADO: The major problems that we saw, at  
22 least that I saw, and that was documented during the course of  
23 this last survey, was the documentation. It was the lack of  
24 documentation by the doctors and other medical staff.

25 And we brought on board different personnel and  
26 consultants, expert consultants, to help us out and train these  
27 people in how to provide a better documentation process, because  
28 we got dinged on pretty much most of that. I think about 85

1 percent of our citations were in regards to the lack of proper  
2 documentation.

3 SENATOR LEWIS: How thorough was the DHS  
4 inspection? How many different buildings house the veterans  
5 with medical problems? Did they physically go into each and  
6 every one of them?

7 MR. ALVARADO: No. There's one -- there's the  
8 administration building, where we have what we call the pods.

9 And there's, I believe there's four wings, and  
10 the different type of skilled nursing. So, they all have  
11 different applications applied to them.

12 In essence, they're all centered around the  
13 administration building. It's just a quad pod.

14 They don't go into the living facilities. That's  
15 independent living.

16 SENATOR LEWIS: DHS inspectors went into every  
17 wing that housed --

18 MR. ALVARADO: Only where the medical application  
19 was taking place at skilled nursing.

20 SENATOR LEWIS: I wanted to ask you just a little  
21 bit about the home loan program.

22 My understanding is, it's lost money the last  
23 seven years. Is that correct?

24 MR. ALVARADO: No, sir. That's not my  
25 understanding.

26 As a matter of fact, we've probably lost in the  
27 last few years, ever since the interest rate on the outside went  
28 down, we lost a significant number of individuals, about 40,000,

1 who chose to refinance their homes through outside -- because  
2 the outside interest rate was lower.

3 But since -- the over last couple of years,  
4 particularly over last year, the Department has actually made in  
5 excess of \$40 million in home loans per month. And we're  
6 getting, quite frankly, overwhelmed with the number of loans  
7 they're applying for.

8 SENATOR LEWIS: Well, the information I have says  
9 that in 1980, the Cal-Vet program handled 120,000 loans, and as  
10 of December, '99, we're now at 33,000 loans.

11 MR. ALVARADO: It's 32,000, Senator. Yes, that's  
12 correct.

13 SENATOR LEWIS: What accounts for that large  
14 loss?

15 MR. ALVARADO: First of all, a lot of the loans  
16 are being paid off.

17 And the interest rates, as I said, certainly  
18 attracted a sizeable number of veterans to refinance their homes  
19 through the outside banking industry, which was a lot lower than  
20 we were back in the '80s. I'm sorry, back in the last three or  
21 four years -- four or five years.

22 We have now an interest rate that's significantly  
23 more attractive than the commercial rates on the outside. It's  
24 about 6.59 compared to the outside interest rates, so it's a  
25 little bit higher than that, about 8 percent more.

26 SENATOR LEWIS: Lastly, you alluded to this, but  
27 in the course of hearing about your nomination, I, and I assume  
28 all the other Members of this Committee, have been certainly



1 inundated with lots of paperwork, both pro and con, to your  
2 confirmation.

3 But your opponents, at least some of your  
4 opponents, have criticized you, and they've alleged a number of  
5 things, including that promotions were based on favoritism.  
6 That there was retaliation against employees who made formal and  
7 informal complaints. There seem to be a rather voluminous  
8 number of these charges that are floating around.

9 What do you think accounts for all this?

10 MR. ALVARADO: Well, Senator, I don't know. But  
11 I can tell you that in my 30-some-odd years of professional --  
12 in this profession, working as a supervisor and/or staff person,  
13 or in any kind of supervisory management position, I've never  
14 practiced that kind of work environment.

15 I don't want to make our department a scapegoat.  
16 I want to maintain and bring back the integrity. As a matter of  
17 fact, I quite frankly am a little confused at people saying  
18 that, because it's very important for me to maintain the  
19 integrity of this agency. I know it's been a scapegoat for a  
20 lot of people to point fingers at, that the Department has run  
21 amok. I don't believe that's the case.

22 I don't do that kind of intimidation, Mr. Lewis.  
23 I don't condone it. If I find anyone that's doing it, I will  
24 take serious and quick action on it.

25 As a matter of fact, last year, when I read these  
26 letters, these anonymous letters that were coming to my  
27 attention, I asked an outside consultant to come in and do a  
28 study, an assessment, on the number of complaints that have been



1 lodged against anyone in this Department.

2 And the consultant went back ten years and found  
3 absolutely no complaints of that nature existed that were  
4 formally filed.

5 If those kind of allegations were levied toward  
6 me, Senator Lewis, I have no idea why they're doing it; I really  
7 don't.

8 But I can assure you, that's not my practice. I  
9 don't like to establish hostile working environments. I don't  
10 like to work in one, nor would I practice that kind of --

11 SENATOR LEWIS: Thank you.

12 CHAIRMAN BURTON: Senator Hughes.

13 SENATOR HUGHES: Many of the people who are  
14 residents of your homes will have one kind of problem or the  
15 other, like alcohol and drug abuse. And I understand that  
16 Yountville Home currently has a licensed drug and alcohol  
17 treatment program. And yet and still, you don't have anything  
18 similar to this at Barstow. And you really tell people to go  
19 out and get these resources.

20 I mean, what are your plans? What have you  
21 planned?

22 If a person is a resident of your institution,  
23 then they don't have a lot of choices to make. They can't say,  
24 I want to be transferred, nor would they know, even, that  
25 another veterans home had this capacity.

26 What do you do? How do you determine which homes  
27 will treat that way and which homes will refer out for other  
28 treatments? And is this fair to the veteran who has given their

1 lives to their country, to have them really ignored and treated  
2 in a different manner from one institution to another? What's  
3 your feeling about that, and why is it so?

4 MR. ALVARADO: Senator, it's not fair. And we  
5 have -- Yountville, as you know, is 116 years old. And they are  
6 far better prepared to deal with a larger scope of veterans that  
7 are in our community.

8 With Barstow, the only resource we have is making  
9 sure that if an individual has an alcohol problem, for example,  
10 we need to make sure that they are -- they participate in the  
11 Alcoholics Anonymous program.

12 The previous administration wasn't -- didn't have  
13 the vision, I believe, to replicate that same program to become  
14 available for our veterans in Barstow.

15 And in Chula Vista, they also have that same  
16 option, but Chula Vista has more immediate resources for ongoing  
17 counsel --

18 SENATOR HUGHES: But then, Chula Vista is new.

19 MR. ALVARADO: That's correct.

20 SENATOR HUGHES: What about Barstow?

21 MR. ALVARADO: Barstow, we have to go back and  
22 revisit -- a lot of things were done wrong in Barstow, Senator.  
23 Lots of things. There were so many short cuts taken in Barstow,  
24 both programmatic and in infrastructure that there's a lot of  
25 things to fix, and we have to get there. We are going to do  
26 that.

27 SENATOR HUGHES: So, since you've been there a  
28 short period of time, how long?

1 MR. ALVARADO: A year.

2 SENATOR HUGHES: So, what are your  
3 recommendations for change as you seek to stay there longer, and  
4 you see these inequities? What are your plans, and what are  
5 your recommendations? And what have you done try to make these  
6 recommendations a reality?

7 MR. ALVARADO: The immediate plans that I looked  
8 at, Senator, were specifically to improve the quality of care  
9 for our members. And we're doing that as a first step, because  
10 we feel that's more important right now at this point, to obtain  
11 highly qualified individuals to apply the medical attention to  
12 our veterans.

13 And we need nurses; we need doctors; we need  
14 other staff. We need quality assurance individuals. Once we've  
15 placed that in the foundation, we can take the next step forward  
16 and move on with additional needs that we may have and require.

17 So right now, my principal priority is to make  
18 sure that we have the quality staff there that we need to help  
19 out in areas that we are lacking individuals, such as registered  
20 nurses.

21 SENATOR HUGHES: What about dementia and  
22 different types of dementia? And specifically I think about  
23 Alzheimer's, specially for someone who has faced combat, and who  
24 has had a lot of tension in their lives.

25 How do you keep these veterans from wandering off  
26 the sites?

27 How many cases have you had, if any, that you  
28 kept track of in your short tenure of veterans who have escaped



1 and gotten lost?

2 When I say escaped, escaped their environment,  
3 became disoriented because they didn't know where they were?

4 Do you have any plans for these?

5 MR. ALVARADO: Yes, ma'am, we do.

6 The Governor has -- and this thought came way  
7 before the Governor created the Blue Ribbon Task Force.

8 As you know, Members, Mr. Chairman and Members,  
9 the Governor created this task force with one specific task, or  
10 with number of tasks, but one of them was to look into the  
11 possibility of providing Alzheimer's and dementia health care to  
12 our veterans.

13 And they're in the process right now of  
14 evaluating those needs and basically where those sites should  
15 be.

16 In Barstow, we have a limited, very limited,  
17 capability to do that, very limited. But we have a small  
18 dementia unit that we just recently opened. It's indoors.

19 The biggest problem we have is the ability, the  
20 ability to be able to care for them. We don't have that  
21 capability at either one of the homes.

22 SENATOR HUGHES: How do you decide, once a family  
23 of a veteran comes, or the veterans themselves, you know, who  
24 may be a lot healthier than some of the people out here in the  
25 street, and decide that they want to stay there.

26 Do you say to them, we don't have the facility to  
27 take care of you, and maybe you'd be better served by going to  
28 another veterans home?



1                   Do you have some sort of screening, or something,  
2 in their placement? Or, do you just honor their first request?

3                   And what do you feel your responsibility is, as  
4 the head of this agency, to see that they are appropriately  
5 placed to get the kind of services that they need?

6                   MR. ALVARADO: Historically, Senator, we don't  
7 have the capability to administer any mental health type  
8 assistance.

9                   We do have a screening process that does ask that  
10 question.

11                   Generally, most veterans that enter into the  
12 veterans home have to pretty much walk in on their own.  
13 However, if something occurs while they're there, we take care  
14 of them. We make every effort in the world, with our limited  
15 capacities, to take care of them. We will not abandon them.

16                   That's why we want to look at the possibility of  
17 engaging into a dialogue with the Veterans Administration in  
18 Long Beach. They want to tear down a golf course. And if they  
19 do that, they've asked us if we wanted the property, and if all  
20 things go well, I'd like to see that be the first veterans home  
21 that deals with that dementia situation.

22                   SENATOR HUGHES: All right.

23                   Have you had any occasion which the families of  
24 the veterans came to you and said that they were not pleased  
25 with the facility, the treatment, or the accommodation, or lack  
26 of accommodation, that these veterans were receiving at the  
27 home? If so, what did you do, and were there many complaints,  
28 very few, or none at all?

1 MR. ALVARADO: I haven't seen any --

2 SENATOR HUGHES: On your watch.

3 MR. ALVARADO: I haven't seen any, Senator. I  
4 have not experienced any complaints from families.

5 On the other hand, it's probably just the  
6 contrary. We've had more families come to our home and  
7 compliment the quality of care that their relatives are  
8 receiving from the Barstow Home and Yountville. I'm sure it's  
9 going to be the same thing in Chula Vista.

10 SENATOR HUGHES: Thank you.

11 SENATOR LEWIS: Questions?

12 SENATOR O'CONNELL: If I may, we've had a chance  
13 to talk before.

14 I wanted to ask you about some recent information  
15 on the veterans homes. As you know, Senator Knight and I worked  
16 a couple of years with you in a different capacity in terms of  
17 development of the additional home.

18 Could you maybe bring us up to speed, your plans  
19 for the future development of the subsequent homes, funding  
20 sources? I know you have been working with some potential  
21 funding from Washington, D.C.

22 MR. ALVARADO: Senator, one of the problems that  
23 we have -- certainly this happened before my watch, again -- is,  
24 I spoke to Senator Knight about it, and the members the  
25 Lancaster community.

26 The rules were changed, in essence, and I had the  
27 name of the law, the federal law. It's not important, but about  
28 a year-and-a-half ago, Congress took it upon themselves to

1 remove California from the Priority One List. So, that means  
2 that now, because we're not on the Priority One List, they're  
3 using an entirely different formula to suggest who is going to  
4 get funded for the next veterans home.

5 So, what we've done with the support of the  
6 Legislature, and asking that we take advantage of the surplus  
7 funds that we have and start going into Lancaster, for example,  
8 and build the Lancaster Home with state surplus funds. It'll  
9 cost us about \$32 million, and by the time we get to your  
10 district, I am confident that we will have worked out that  
11 Priority One List situation.

12 I'm not confident that we can do it in a year,  
13 because they've already put us down so low. Because of the  
14 enormity of our state, all the other little states are taking  
15 advantage of this, because that's essentially what happened.  
16 The larger states with a number of veterans homes pretty much  
17 got moved away from the Priority One List.

18 But we will continue to work with the VA to try  
19 to get us back up. And essentially what that's going to take,  
20 Senator, is either preferential legislation, or it's going to  
21 take an intense lobbying effort on our behalf. But I don't see  
22 that happening because it's just a drawn-out process.

23 I see the vehicle there, particularly for  
24 Lancaster, to use state surplus funds to build that home and  
25 just move on. If we do that, it provides us with a better  
26 avenue of independence. We're not tied down to the VA. And I  
27 would prefer to see that, rather than going through the VA.

28 SENATOR O'CONNELL: Could any of the recently



1 passed \$50 million bond measure that, I think, Senator Dunn had,  
2 could any of that money be used for --

3 MR. ALVARADO: I think it could be used. I'd  
4 like to use it. It would certainly provide us with a visible  
5 commitment to provide to the VA that we're serious about  
6 applying money, if not seed money.

7 Like, Senator Knight has a bill, I believe, that  
8 would give us, I believe it's \$12 million. And that, to me,  
9 what I see is a line of credit. We give it to the VA and show  
10 it to them that we're serious about this, and that would provide  
11 us with an opportunity to, perhaps, work with them, and move us  
12 away from -- below the Priority One List.

13 But yes, I think we could use that money.

14 SENATOR O'CONNELL: What role would you play  
15 over the bond money that passed, that the voters approved? What  
16 role do you play as the Secretary?

17 MR. ALVARADO: My role was to get the word out,  
18 and get the voters out.

19 SENATOR O'CONNELL: Subsequent to the passage of  
20 the bond measure, do you determine the allocation of that bond  
21 money now?

22 MR. ALVARADO: I think it's a collective effort,  
23 Senator. I won't do it by myself. There's going to be others  
24 that are going to be involved in this. But I want to do it in a  
25 collective --

26 CHAIRMAN BURTON: Who?

27 MR. ALVARADO: It's going to have to be the  
28 Governor's Office, the respective district -- the respective



1 Senators, and the Department of Finance.

2 SENATOR O'CONNELL: Thank you very much.

3 CHAIRMAN BURTON: I have one question.

4 What else are you going to do with these bonds if  
5 you don't use them for veterans homes.

6 SENATOR KNIGHT: That's a good idea. I thought  
7 that's what they were for.

8 CHAIRMAN BURTON: You said you'd like to do them.  
9 What else can you do with them? You can't buy fishing tackle.

10 MR. ALVARADO: That's correct.

11 CHAIRMAN BURTON: So, the answer to the question  
12 is, yeah, we can use these veteran bonds to do what the Senators  
13 are talking; right?

14 MR. ALVARADO: That's correct.

15 CHAIRMAN BURTON: That's not how you answered it.

16 MR. ALVARADO: I understand that. Wrong answer.

17 CHAIRMAN BURTON: Senator Knight.

18 SENATOR KNIGHT: My \$12 million was primarily for  
19 the state's portion of the construction of the home in  
20 Lancaster..

21 My understanding also is that there is a  
22 possibility that we could go ahead and pay for the total  
23 construction and be reimbursed from the federal government at  
24 sometime later. Are you aware of that, or is that a fact or  
25 just a rumor?

26 MR. ALVARADO: That's the understanding that I  
27 have, Senator. Sometimes the VA doesn't like for us to get  
28 ahead of themselves -- ourselves.

1 I don't know how they would feel about going back  
2 and asking us -- to pay us the money that they owe us.

3 But if possible, I would love to use just state  
4 money for this. It's easier. It's a lot faster, and we have  
5 less strings tied to the VA.

6 SENATOR KNIGHT: Another question is, it's been  
7 indicated there have been stacks and stacks of paperwork coming  
8 in opposing your confirmation.

9 You indicated that you didn't know why or what  
10 the problem was. And you still maintain that you don't have any  
11 idea what kind of a problem generated all of the paperwork that  
12 has come in opposing your nomination?

13 MR. ALVARADO: Well, Senator, I know that during  
14 the course of my tenure as the Deputy Director, management  
15 situations were changed. And I'm assuming that there are some  
16 individuals that didn't like our decisions, and now they're  
17 taking the opportunity to come towards me and oppose my  
18 confirmation.

19 But that's the extent of what I can think of. I  
20 can't think of anything else, Senator, I really can't.

21 SENATOR KNIGHT: There is an indication that you  
22 may have hired a medical officer at Barstow that had a  
23 probationary license?

24 MR. ALVARADO: No, that's in Yountville.

25 SENATOR KNIGHT: Was it Yountville?

26 MR. ALVARADO: Yes, sir.

27 SENATOR KNIGHT: Is there any reason that we  
28 would have to hire a probationary medical officer?

1 MR. ALVARADO: Well, he was hired a number of  
2 years ago. He was instructed -- because of a fatality that was  
3 committed while he was practicing, he was put on a probationary  
4 period for a particular period. And he was instructed to  
5 complete at least a four-year class, training, and going through  
6 a number of other classes that would require him to -- that  
7 would allow him to come back and practice.

8 He was interviewed by the staff at Yountville.  
9 He went through all the process, the medical staff, nursing  
10 staff. And he is very well liked by the veterans at Yountville.  
11 He has not had any problems. He's proved to be an outstanding  
12 interim Chief Medical Officer.

13 But so far, I have not received any information  
14 that's negative in any way. The doctors supported him.

15 CHAIRMAN BURTON: You're talking about Barstow;  
16 you're talking about alcoholism, and the best you can come up  
17 with is encourage them to join AA?

18 MR. ALVARADO: In Barstow, yes, sir. We don't  
19 have the facilities.

20 CHAIRMAN BURTON: What's the facility? Do you  
21 know what the facility takes? It takes a room. Takes a couple  
22 shrinks; takes a couple psych techs; takes meeting; takes group  
23 therapy; takes a room.

24 Doesn't take -- it's not brain surgery. It's kind  
25 of group therapy. It takes a room. Takes a room smaller than  
26 this or larger, depending on how many people you have with the  
27 problem.

28 Doesn't take anything. Do it in a mess hall at



1 night.

2 I mean, I imagine you have rooms there; right?

3 MR. ALVARADO: That's correct.

4 CHAIRMAN BURTON: So, I'm missing something.

5 MR. ALVARADO: You're talking about bringing in  
6 additional staff? Is that what you're saying, Senator?

7 CHAIRMAN BURTON: I'm talking about trying to  
8 deal with alcoholism and drug abuse among the veterans, so I  
9 guess yeah. You have some shrinks. You have some psych techs.  
10 You have people to facilitate the group dynamic, yeah.

11 MR. ALVARADO: Senator, that's one of the  
12 problems we were having in Barstow big time, is recruitment and  
13 retention. We've not had the luxury of hiring additional staff  
14 to provide that kind of service, so we don't have --

15 CHAIRMAN BURTON: Why is that?

16 MR. ALVARADO: Senator, the previous  
17 administration took it upon themselves to run on a shoe-string  
18 budget. That's why we're having the problems that we're having  
19 right now, the over-time, the excessive over-time.

20 CHAIRMAN BURTON: Have you asked for money in the  
21 budget for these kind of things?

22 MR. ALVARADO: Yes, sir. Yes, we did.

23 CHAIRMAN BURTON: For what?

24 MR. ALVARADO: We asked for about \$24 million to  
25 bring in additional nurses, about quality assurance teams,  
26 doctors, and registered nurses, to provide a wider scope of  
27 medical --

28 CHAIRMAN BURTON: Why didn't you ask for it



1 directly to deal with drug abuse and alcoholism?

2 MR. ALVARADO: Not in Barstow. We didn't do that  
3 in Barstow.

4 CHAIRMAN BURTON: Why?

5 MR. ALVARADO: Well, sir, I haven't -- that  
6 critical need hasn't been brought to my attention in Barstow.

7 CHAIRMAN BURTON: Got no drunks in Barstow?  
8 Nobody there with drugs.

9 MR. ALVARADO: I don't know. It's not a critical  
10 need.

11 CHAIRMAN BURTON: Why are you going to tell them  
12 to go to AA?

13 MR. ALVARADO: That's been the procedure. It's  
14 been the extended procedure.

15 CHAIRMAN BURTON: Well, you don't tell them to go  
16 to AA if they're sober. You tell drunks to go to AA.

17 So, if everybody there is sober, and never been a  
18 drunk or a druggie, in other words, there's no alcoholism. No  
19 drug dependency among the patient load in Barstow?

20 MR. ALVARADO: I haven't seen that problem,  
21 Senator, I really haven't. Staff hasn't brought it to my  
22 attention.

23 SENATOR LEWIS: I have a question.

24 CHAIRMAN BURTON: Be my guest.

25 SENATOR LEWIS: You mentioned that retention was  
26 a problem in Barstow?

27 MR. ALVARADO: That's correct.

28 SENATOR LEWIS: How is the employee morale at the

1 Barstow facility?

2 MR. ALVARADO: It -- it's been low, Senator, over  
3 the last four or five years, basically I guess in the last four  
4 years. The turnover has been relatively high, at least higher  
5 than I would want to accept.

6 Even during the course of my tenure, I've seen a  
7 lot of turnover because we just can't compete with the other --  
8 other hospitals with respect to compensation.

9 And in this budget that we submitted for  
10 consideration and approval, we've asked for the addition of the  
11 necessary money to provide recruitment and retention incentives  
12 for our nurses, RNs and LVNs.

13 But it's been -- the morale has been such that  
14 it's picking up, because I think they recognize that we're  
15 surely interested in their best interest in terms of providing  
16 them with incentives to stick around.

17 SENATOR LEWIS: There have been a number of  
18 employees in Barstow that have been placed on administrative  
19 leave.

20 MR. ALVARADO: Uh-huh.

21 SENATOR LEWIS: They have alleged that sometimes  
22 it's because they've engaged in whistle-blower activity.

23 Have you heard that?

24 MR. ALVARADO: On the administrative for  
25 whistle-blowing?

26 SENATOR LEWIS: Yes, for whistle-blowing.

27 MR. ALVARADO: I don't think it's been for  
28 whistle-blowing. I really don't.

1 SENATOR LEWIS: How many --

2 MR. ALVARADO: I do believe some of these  
3 employees that were put on administrative leave are personnel  
4 actions.

5 CHAIRMAN BURTON: Like what?

6 MR. ALVARADO: Sir, I don't know if I'm allowed  
7 to comment. It's going through the process right now. I know  
8 some of those individuals are here today.

9 CHAIRMAN BURTON: We aren't asking names.

10 There's an allegation that they were getting  
11 screwed over for whistle-blowing. The response to that is --

12 MR. ALVARADO: No. I haven't heard of any  
13 whistle-blowing reprimands at all, Senator. I have not.

14 SENATOR LEWIS: I think I see some of them in the  
15 audience. I'll just wait until they come up.

16 CHAIRMAN BURTON: Who was the consultant that was  
17 hired to do the study you talked about?

18 MR. ALVARADO: Len Blair and Associates.

19 Are you talk about going into the Barstow.

20 CHAIRMAN BURTON: Right.

21 MR. ALVARADO: Len Blair and Associates.

22 CHAIRMAN BURTON: Was it an independent study, or  
23 was it hired by the people that he was studying?

24 MR. ALVARADO: No, the Len Blair and Associates  
25 was hired by the Department.

26 CHAIRMAN BURTON: So, he was hired by the  
27 department that he was studying?

28 MR. ALVARADO: No, they weren't -- I'm not quite



1 sure what you're talking about, Senator.

2 CHAIRMAN BURTON: He's taking a look at Barstow;  
3 right?

4 MR. ALVARADO: Len Blair and Associates came in  
5 -- was brought in, Senator, to review our practices,  
6 specifically to help us get past the survey, this past survey  
7 that we under went.

8 CHAIRMAN BURTON: That was the one that you  
9 passed.

10 MR. ALVARADO: That's correct; yes, sir.

11 CHAIRMAN BURTON: So, there were how many surveys  
12 that we didn't pass?

13 MR. ALVARADO: Two previous to that.

14 CHAIRMAN BURTON: There were two previous surveys  
15 this thick that we didn't pass, and then we had one survey this  
16 thick that passed us?

17 MR. ALVARADO: We went from 122 deficiencies to  
18 8, and then one. The first one was originally 122 deficiencies  
19 last year.

20 CHAIRMAN BURTON: Did the surveys talk about the  
21 deficiencies, and then say these were corrected? Or did he just  
22 say the deficiency is, like, whatever?

23 MR. ALVARADO: What they do, the DHS did the  
24 inspection. And when the deficiencies were brought to our  
25 attention, I took immediate action to address the issue relative  
26 to those who were responsible for it.

27 CHAIRMAN BURTON: Tell me about the Cal-Vet Life  
28 and Disability Insurance Plan. Do you know whether or not any



1 vets or survivors lost homes as a result of either the increased  
2 premiums or decreased benefits from the program?

3 MR. ALVARADO: None, sir. None.

4 CHAIRMAN BURTON: None whatsoever?

5 MR. ALVARADO: None, and they won't lose their  
6 homes during my watch.

7 CHAIRMAN BURTON: Why not, if the policy says you  
8 have to? Are you going to reach in your own pocket?

9 MR. ALVARADO: We tried to work with veterans.  
10 That's historically been the plan. We don't -- we're not in the  
11 business of --

12 CHAIRMAN BURTON: It is a private insurance  
13 company.

14 MR. ALVARADO: That's correct.

15 CHAIRMAN BURTON: So, how are you going to tell  
16 them not to do it?

17 MR. ALVARADO: They work for us, Senator. They  
18 work for the Department of Veterans Affairs.

19 CHAIRMAN BURTON: You pay the premiums, but  
20 they're the insurance company. They're making the profits and  
21 taking the risk; right?

22 MR. ALVARADO: Right, but there have been no  
23 foreclosures at all, not one, not once.

24 CHAIRMAN BURTON: Senator Hughes.

25 SENATOR HUGHES: Along that line, may I follow up  
26 on that same question?

27 CHAIRMAN BURTON: Yes, you may.

28 SENATOR HUGHES: This is the disability insurance

1 coverage previously paid by the disabled veterans for mortgage,  
2 taxes, and insurance as long as they are disabled; is that  
3 correct?

4 MR. ALVARADO: That's correct.

5 SENATOR HUGHES: But under the Department's  
6 current plan, the coverage stops after two years, regardless of  
7 the continuing disability of the veterans or whether the veteran  
8 can even return to work.

9 How many potential veterans may lose their home  
10 because of this problem, because of your Department's policy?  
11 That's the way, I think, that Senator Burton was going, and  
12 that's what I don't have clarified. Because, you said they  
13 won't lose it.

14 If you have a policy that says, after two years,  
15 why wouldn't they lose it? What do you have to counter-act the  
16 loss of that property?

17 MR. ALVARADO: Well, what I meant, Senator, was  
18 if there is a veteran who has a disabled -- is in a disabled  
19 situation, we will work with that person to extend the  
20 protection until he or she --

21 CHAIRMAN BURTON: How do you do that?

22 MR. ALVARADO: We have that option, Senator.

23 CHAIRMAN BURTON: How do you have that option?  
24 You contract with an insurance company to provide coverage,  
25 which is a contract, and they're in business to make money. The  
26 contract says that they will get coverage; you've got two years'  
27 coverage.

28 Now, how does that coverage get extended?

1 MR. ALVARADO: Well, Senator, I have handled some  
2 of those personally. When I get a letter from an individual  
3 concerned about their two-year limitation is coming forward,  
4 I've always made it a point to suggest, strongly suggest to our  
5 Chief of Farm and Home to find a solution, to work with this  
6 individual so that he's not displaced from his home.

7 CHAIRMAN BURTON: How do you work with them? A  
8 guy's disabled and has no income.

9 MR. ALVARADO: No, not with the individual. I'm  
10 talking about trying to extend. For example, trying to extend  
11 the --

12 SENATOR HUGHES: But the disability has not been  
13 corrected, and the person's still going to be disabled. So, how  
14 do you rectify that? I mean, how do you keep it from -- you're  
15 saying you stop it? How do you stop it?

16 This disabled, suppose the person's lost a limb  
17 and has not adjusted to using an artificial limb, and they have  
18 limitations about what they can do physically.

19 How do you stop it? What do you do? I don't  
20 understand what you're saying.

21 MR. ALVARADO: Well, Senator, I've got to tell  
22 you that this decision was made before I came on board. It was  
23 made in 1996, I believe it was.

24 SENATOR HUGHES: Yes, but you said you personally  
25 handle it. What do you do to handle it?

26 MR. ALVARADO: If someone comes -- if I get a  
27 letter from an individual over the last year that I've been  
28 there, if I get a letter from an individual saying, "I'm leaving



1 my two-year coverage, and I'm afraid I'm going to be displaced."

2 SENATOR HUGHES: And you say, don't worry, I'll  
3 take care of it?

4 MR. ALVARADO: I'd like to do that. I'd like to  
5 say don't worry.

6 SENATOR HUGHES: That's what you just said.

7 MR. ALVARADO: That's correct.

8 SENATOR HUGHES: That you told that to  
9 Mr. Burton --

10 MR. ALVARADO: That's correct.

11 SENATOR HUGHES: -- that you said you personally  
12 get involved, and they don't have to worry.

13 SENATOR HUGHES: You say you take care of it,  
14 and you rectify the situation?

15 MR. ALVARADO: As temporary -- as much as I can,  
16 Senator, yes.

17 SENATOR HUGHES: As temporary?

18 MR. ALVARADO: Yes, ma'am.

19 SENATOR HUGHES: As temporary.

20 So, you won't get put out on the street until  
21 next month --

22 MR. ALVARADO: No, ma'am.

23 SENATOR HUGHES: -- instead of tomorrow.

24 And that's what you mean, I guess?

25 MR. ALVARADO: No, no, no.

26 SENATOR HUGHES: I don't know; it's very fuzzy to  
27 me.

28 I don't understand. I really don't understand.



1                   CHAIRMAN BURTON: I just want to follow up on  
2 this, and then we can hear from witnesses in support and  
3 opposition, if there is any.

4                   The second tiered veterans, who would be the ones  
5 that weren't grandfathered in, they have mortgage payments of  
6 principle and interest for five years, three years, or one year,  
7 depending on the veteran's current health status. Which kind of  
8 leaves the widow somewhere.

9                   Whereas, before, I guess it was like the  
10 mortgage-life insurance somebody else has.

11                  MR. ALVARADO: Right.

12                  CHAIRMAN BURTON: Under the disability insurance,  
13 they get principle, interest, and taxes for 24 months, or 12  
14 months if it's psychiatric disability. And there's a 90-day  
15 waiting period, which is helpful. And, in any case, only until  
16 the age of 62.

17                  I mean, I think I much rather would have been the  
18 one selling the insurance than the one buying the insurance.

19                  What are you doing on the issue of homeless vets?

20                  MR. ALVARADO: Senator, we've applied -- we're  
21 working with the WIA. And we submitted an application to them  
22 for \$15 million to be able to provide funding for homeless  
23 veterans through the different community-based organizations  
24 that are working with that targeted group.

25                  Right now, as a department, we don't have that  
26 capability to do that. We just work to enhance and to help in  
27 the stand-downs.

28                  CHAIRMAN BURTON: To serve them how?

1 MR. ALVARADO: Well, we work with the stand-down  
2 folks do the stand-downs throughout the state. But we don't  
3 have the capabilities to serve --

4 CHAIRMAN BURTON: You were asking for \$15 million  
5 to contract with community-based organizations to serve homeless  
6 vets.

7 Have you gotten any commitment on those funds?

8 MR. ALVARADO: No, sir. No, sir. We just  
9 started that process about a month-and-a-half ago.

10 CHAIRMAN BURTON: What did you do before then for  
11 homeless vets?

12 MR. ALVARADO: We were putting together -- well,  
13 like I said, our role historically in the Department has been to  
14 work with the stand-down efforts throughout the state.

15 CHAIRMAN BURTON: Historically there haven't been  
16 a lot of homeless, either, historically.

17 MR. ALVARADO: Homeless veterans?

18 CHAIRMAN BURTON: Historically. I mean, it's  
19 been homelessness, unfortunately, has been a recent, I think,  
20 phenomena over ten years, if that's the historic we're talking  
21 about.

22 How did you come up with the 15 million? What  
23 would you do with it?

24 In other words, you're going to get 15 million to  
25 contract with somebody else?

26 MR. ALVARADO: Somebody that's doing it already.

27 CHAIRMAN BURTON: What are they going to do?

28 WIA is for job training and other stuff, not to provide shelter;

1 right?

2 MR. ALVARADO: Right. I do believe that's  
3 correct.

4 What we're going to do, sir, is, we have a number  
5 of veterans organizations, or veterans community-based  
6 organizations throughout the state that have currently proven  
7 themselves in providing the kind of services that we can't  
8 provide.

9 So, with this \$15 million --

10 CHAIRMAN BURTON: Why can't you provide it?

11 MR. ALVARADO: Because we don't have the money,  
12 nor do we have the capability.

13 CHAIRMAN BURTON: Have you asked for it?

14 MR. ALVARADO: No, sir.

15 CHAIRMAN BURTON: Why not?

16 MR. ALVARADO: I don't know, sir. I don't know.

17 CHAIRMAN BURTON: Honest answer.

18 SENATOR KNIGHT: Mr. Chairman, one more  
19 question.

20 That bill you were looking for was HR 2116. Is  
21 that it?

22 MR. ALVARADO: I believe that's it.

23 SENATOR KNIGHT: And that bill became effective  
24 11/30/99.

25 MR. ALVARADO: Wasn't it -- wasn't it going  
26 through the process in '98? I believe it was going through the  
27 process in '98.

28 SENATOR KNIGHT: It was instituted in June of '99



1 and became law in November of '99. So, it would appear as  
2 though we should have been aware of that and kept up with it.

3 MR. ALVARADO: We should have. I certainly was  
4 not aware of it, Senator.

5 CHAIRMAN BURTON: Witnesses in support.

6 MR. FITZKE: Good afternoon, Mr. Chairman,  
7 Committee. My name is John Fitzke. I am the Vice Chairman of  
8 the State Veterans Board, representing the Chairman, George  
9 Sinopoli.

10 The State Veterans Board passed a resolution  
11 signed by all of its members in support of our Secretary,  
12 Mr. Alvarado, and he does have our full support.

13 I can honestly tell this Committee that in the  
14 ten months that most of us have been in operation on the Board,  
15 had the opportunity to work with the current Secretary,  
16 Mr. Alvarado, his fullest attention and greatest desire has been  
17 to do what is right for the fellow veterans in the State of  
18 California.

19 I guess to put it simple, you don't gain 300  
20 pounds in five years or four years and try to lose it  
21 overnight.

22 We have been very frustrated on the Board in  
23 working with a Secretary, in that we have inherited a lot of  
24 previous decisions from a prior administration. And  
25 unfortunately, you just don't correct them overnight.

26 But Mr. Alvarado does have the full support of  
27 the Veterans Board, and I thank you very much for your time.

28 CHAIRMAN BURTON: Thank you, sir.



1 MR. JACKSON: Thank you, Senator. Good  
2 afternoon, ladies and gentlemen.

3 My name is Bill Jackson. I'm a desert rat. I  
4 came to Barstow in 1951 with the United States Army to open  
5 Irwin. I loved it, and I stayed there.

6 CHAIRMAN BURTON: I hope you bought a lot of  
7 property. It's growing.

8 MR. JACKSON: The past 25 years, I've been deeply  
9 involved in veterans affairs because of my affiliation with the  
10 American Legion, because of my experience growing up with older  
11 people.

12 I'm absolutely amazed, and I enlisted in the  
13 fight to create veterans facilities in Southern California 18  
14 years ago, never thinking that I would be a resident someday.  
15 But I've been a resident of Barstow for the past two years.  
16 I've been active.

17 And I'm awfully glad that I have had the support  
18 and friendship of not just Tomas Alvarado, but the whole staff.  
19 In appointing this gentleman, in endorsing this gentleman, you  
20 get the whole staff.

21 We believe that if we've given enough time, by  
22 golly, we can solve these problems. Most of the problems have  
23 been put upon us with the hound dogs nipping at our heels. They  
24 were created by others, and we resent it.

25 We have been in constant touch with the  
26 administration, with the staff. They accept our reason and our  
27 ability, but we have certain people who have never even been to  
28 the home, don't have the vaguest idea what's going on, creating

1 situations that we're doggone sick and tired of.

2 Mr. Chairman, I proudly request an aye vote of  
3 the Committee for Tom Alvarado.

4 Thank you.

5 CHAIRMAN BURTON: Thank you, sir.

6 MR. HARPER: Good afternoon, Mr. Chairman and  
7 Members of the Committee. My name is Don Harper, and I am  
8 President of the California Association of Veterans Service  
9 Agencies.

10 We are a community-based organizational system in  
11 California, providing 19 programs for veterans throughout the  
12 State of California in 20 different geographical areas,  
13 representing veterans, mainly veterans that have barriers to  
14 employment. And we do a lot of work with the homeless veterans  
15 and disabled veterans.

16 I am here on behalf of the Association to support  
17 the confirmation of Secretary Alvarado.

18 A couple comments, if I may. As many of you may  
19 know or may not know, the Secretary at one time worked for a  
20 nonprofit community-based organization doing services with  
21 veterans that needed special training needs and provided  
22 homeless services as well. So, he has an understanding of the  
23 kind of group of veterans that we serve in our system here.

24 He has also been involved, and his staff has been  
25 involved directly with the stand-down program in California,  
26 focusing on homeless veterans.

27 I founded the Sacramento stand-down back in 1992,  
28 and I recall then not only he, but did members of that

1 department come out and do direct services for veterans who were  
2 homeless for a long period of time.

3 So, I think now, they have a vision on the table  
4 to be pro-actively and try to do so something, working with  
5 homeless veterans, as the Senator indicated a few minutes ago.

6 We think, as an Association, he understands the  
7 special needs and special programs that are needed for this  
8 population. They're either homeless or at risk of being  
9 homeless. And he recently submitted a Gap Report to the  
10 Governor that talked about gaps in services and solutions and  
11 programs that would get to the heart of the issue.

12 Like you indicated, Senator, homelessness is a  
13 relatively short phenomenon in the past ten years. And with  
14 your good work and other people working on this issue, we think  
15 we can make a dent in providing hard-core, decent, significant  
16 services for our homeless veterans in California.

17 I think his Gap Report reflects solutions and  
18 programs, I think, that we're going to be a part of to make sure  
19 every veteran has a chance to better himself in California.

20 My last comment would be -- is that we feel that  
21 the Secretary should look at all the gaps, not just gaps for  
22 homeless veterans, but all the gaps for veterans in California.  
23 And by you giving him an aye vote on the confirmation, we feel  
24 many gaps will be helped, and veterans will be better served in  
25 California.

26 CHAIRMAN BURTON: I thank you, but I'm troubled  
27 about the fact that the only thing that the Secretary did  
28 concerning homeless veterans was to ask for some TANF money. He



1 didn't submit money for the Veterans budget, and we know how  
2 supportive of veterans the Governor is, being one. That there  
3 wasn't a request in the budget for money for homeless veterans,  
4 but to take it out of TANF, which then takes it out of a variety  
5 of other programs that were really geared for those who are  
6 welfare recipients coming off welfare and not necessarily the  
7 homeless veterans. So, I'd be surprised, maybe, if even they  
8 qualified.

9 But I was kind of distressed to find out there  
10 wasn't a request for a big appropriation in the Department's  
11 budget for that. But that's just my own opinion.

12 MR. HARPER: It's been our Association view for  
13 the last two or three years that the Secretary, the new  
14 Secretary and the past secretaries need to take real hard look  
15 and be pro-active -- a pro-active look, and putting more money  
16 in the budget for homeless veterans. We concur a thousand  
17 percent.

18 CHAIRMAN BURTON: Other witnesses? Sir.

19 MR. LATTMAN: Senator Burton and Members, my name  
20 is Larry Lattman. I'm Chairman of Allied Council at the  
21 Veterans Home in Yountville.

22 Myself and my Board, the Allied Council, are  
23 elected officials like yourselves. And I'll tell you, I'll  
24 never run for another office again as long as I live. I don't  
25 know how you guys do it.

26 The California Veterans Home in Yountville is the  
27 largest veterans home in the world. It's the third oldest home  
28 in the United States. Tomorrow, I'll be giving an interview to



1 CBS, to Dan Rather News, about our home. It'll be broadcast  
2 nationwide the 26th of this month on the Dan Rather, CBS News.

3 There are 1126 of us living in the home. The  
4 average age in our home is 78 years old, 78; 30 percent of our  
5 membership, our vets, are in wheelchairs, they're on walkers, or  
6 scooters.

7 We have to tell the children tomorrow, we're  
8 going to a middle school to tell children about freedom and  
9 democracy. I'll be taking with me to that school a World War I  
10 veteran. We have four World War I veterans living in the home,  
11 and all the way down to Desert Storm, and Korea, World War II.

12 Now, we all know what happened in World War II  
13 and what we owe the veterans in World War II. Hell, you  
14 wouldn't be sitting here if it wasn't for the veterans of World  
15 War II.

16 Now, since this administration has come in, this  
17 new administration with our new Governor, Gray Davis, a veteran,  
18 a decorated veteran, and he brought forward the name of Tomas  
19 Alvarado to become Secretary of Veterans Affairs.

20 The first thing I did, I looked up his military  
21 record. This man has two silver -- was wounded twice. Has all  
22 the decorations in the world. He knows the pain. He knows the  
23 anguish that we feel.

24 And every time -- I don't know the man that  
25 well. I met him on three occasions, but everytime that I met  
26 him, he gave us hope. He gave us time. He solved problems for  
27 us.

28 And if he did one thing alone that deserves his

1 confirmation, he sent to the home a lady Commander from the Navy  
2 to be our new administrator. We have been so rudderless the  
3 last three or four years with interim administrators. And this  
4 young woman has brought new life into that home like you've  
5 never seen before. It's absolutely amazing what she has done in  
6 the short period of time. If this test alone would bring him  
7 confirmation, then he would pass A.

8 I do know the third man in the veteran community,  
9 which is Mike Manilow. With Mike Manilow on Secretary  
10 Alvarado's team, we cannot lose.

11 We are the largest home in the world. We know  
12 this gentleman intimately. We know what he's done for us. We  
13 have the Blue Ribbon Commission. We have the very generous  
14 budget that you people have given us. We thank you for it.

15 We also have the lynch pin, Proposition 16. That  
16 will be the keystone to build that bridge into the new  
17 millenium of Veterans Affairs coming up, the health issue. This  
18 is the first gentleman that's tackling the dementia and  
19 Alzheimer's disease.

20 I worked for two years in outreach. I heard  
21 these hideous stories of families breaking up because of  
22 dementia. It was the first time I heard from an individual in  
23 the Secretary's office that again tackled dementia and  
24 Alzheimer's disease. This is wonderful news for us.

25 As far as stand-downs, we had a stand-down, an  
26 East Bay stand-down. We even brought Miss America down. We had  
27 her flown, and we had doctors there. We had dentists there. We  
28 reach out to these people everytime we get a chance. Vets take

1 care of vets.

2 And I will also tell you this, that a hundred  
3 years ago almost to this day, the State of California bought  
4 from the Grand Army of the Republic the home in Yountville for  
5 20 dollars. That was better than the Louisiana Purchase,  
6 Senator Burton.

7 CHAIRMAN BURTON: Better than Alaska.

8 MR. LATTMAN: Yeah, for \$20. And it's a hundred  
9 years today, almost to today, that we got into the veteran that  
10 the people of California, by their divine wisdom, compassion,  
11 and patriotism are looking after the veterans of this state.

12 And the way to continue to do so, I strongly  
13 urge you to confirm this Marine. And I'm an Army man, I'm  
14 telling you. And I have to tell you to confirm a Marine, and  
15 I'm an Army man, but I'm telling you, this man is our answer to  
16 our problems in the future.

17 Thank you very much.

18 CHAIRMAN BURTON: Next.

19 MR. BROWN: Mr. Chairman and Members, my name is  
20 Judge Brown. I'm representing the Veterans of Foreign Wars  
21 today. Our Commander is out of town. He asked me to come up  
22 and pass on to you that the Veterans of Foreign Wars, the  
23 110,000 member strong in the State of California, endorsed Tom  
24 last June at our Buena Park convention.

25 There was some questions of whether we did or did  
26 not ask at the November council administration, which is a small  
27 thing we have twice a year. That was done in November in  
28 Modesto at our state meeting. We again unanimously endorsed him



1 for his appointment at that time.

2 So, with that, and all the other testimony here,  
3 the Veterans of Foreign Wars is in full support of not only his  
4 nomination, but his appointment.

5 Thank you.

6 CHAIRMAN BURTON: Thank you, sir.

7 MR. PEREZ: Senator Burton I'm Jose Perez. I'm  
8 the President of the Sacramento Hispanic Chamber of Commerce.

9 We have known Mr. Alvarado now for about twelve  
10 months. And I've got to tell you that since our very first  
11 introduction, there's no question in our mind that he is a  
12 champion of veterans.

13 He has talked about issues in the homes. He's  
14 talked about the challenges that are before him. And we are  
15 convinced that he is someone that clearly cares about the  
16 welfare of veterans of California.

17 On top of that, he also has done something that  
18 we wish more appointees, quite frankly, do, and that is to open  
19 and invite small business owners to look at procurement  
20 opportunities with the State of California, not just in his  
21 agency, but encouraging small business owners to look at small  
22 businesses. And we think that's a really important thing,  
23 character that's admired.

24 We support his confirmation and urge an aye vote.

25 CHAIRMAN BURTON: Thank you, sir.

26 MR. McCABE: Mr. Chairman, Members of the  
27 Committee, my name is Lawrence McCabe. I've been before you  
28 before for a different director.



1 I am here today to represent Cafe de California,  
2 a benevolent association of state employees.

3 We urge you to nominate and approve the  
4 endorsement for this man.

5 I know Mr. Alvarado personally. I find him to be  
6 a man of high character, and a man who represents the community  
7 well in all sense of diversity.

8 Again, we urge you to vote yes for him.

9 CHAIRMAN BURTON: Now, what I would like to do if  
10 there are other witnesses in support, give your name, your  
11 organization, if you're in some support.

12 We want to give the opposition a chance, then  
13 Mr. Alvarado a chance to respond to the opposition.

14 So, anyone who has prepared statements, we'll put  
15 them in the record. Otherwise, name, organization and  
16 support.

17 Sir.

18 MR. GARCIA: Mr. Chairman, honorable Members of  
19 the Committee, my name is Gaspar Garcia. I'm the Commander of  
20 the American GI Forum in Sacramento.

21 I am here in support of Mr. Tomas Alvarado.  
22 Mr. Tomas Alvarado was appointed by Governor Davis. And since  
23 he was appointed, there's been a lot of riff-raff saying things  
24 about him.

25 But I know his programs and his efforts on behalf  
26 of veterans throughout California have been unequalled by anybody  
27 serving in that position thus far.

28 I urge you that you listen to the veterans of

1 California and support the confirmation of Tomas Alvarado as  
2 Secretary of the California Department of Veterans Affairs.

3 Thank you very much.

4 CHAIRMAN BURTON: Thank you.

5 MR. SANCHEZ: Rafael Sanchez. I'm on the Board  
6 of Directors of the United States Hispanic Chamber of Commerce.

7 We urge strongly a yes vote on his confirmation.  
8 Thank you.

9 DR. MARTEL: Dr. Joseph Martel from the  
10 California Latino Medical Association.

11 We strongly support the confirmation of Tomas  
12 Alvarado as the compassionate and wounded previous veteran.

13 Thank you.

14 MR. BURNETT: Hello. My name is Ted Burnett.  
15 I'm the labor representative for California State Employees  
16 Association. And I'm the rep for Barstow Veterans Home.

17 I'd just like to take 30 seconds just to tell you  
18 what bad a shape it was in when I got there nine months ago.

19 The home had run off the other two previous  
20 reps. When they hired me, they told me that Barstow -- I would  
21 spend 80 percent of my time, even though I represent other  
22 prisons, EDD, Caltrans, and California Highway Patrol up the  
23 desert area.

24 I didn't know it was that bad. It was bad.  
25 There was rampant use of alcohol on the premises. People coming  
26 in late. They didn't call in. Disciplinary actions.  
27 Favoritism by the administration. A myriad of problems that  
28 existed.

1                   We came in. We set down with Mr. Alvarado and  
2 the administration and said that we need to get together and  
3 form a partnership and a marriage to try to clean this place  
4 up. He said whatever we need to do to work together, we could  
5 do.

6                   We formed a labor-management committee. All the  
7 disciplinary actions that occurred there, we sat down and we  
8 discussed them before they were ruled upon. We came in and had  
9 a partnership to improve morale with the workers. And on my  
10 part with the Union, I took a lot of heat from my organization  
11 for entering into a partnership with management, but I felt that  
12 that was the only way that we could give the taxpayers and the  
13 veterans the most possible -- the best service that we could  
14 give them.

15                   And I can safely say that in nine months, we have  
16 improved the morale of the home. They have policies and  
17 procedures that are now followed.

18                   CHAIRMAN BURTON: You're in support?

19                   MR. BURNETT: I'm in support.

20                   But I'll tell you folks, I'm telling the truth.  
21 I came in to tell the truth, not to do anything but just tell  
22 you.

23                   CHAIRMAN BURTON: I understand that.

24                   MR. BURNETT: The home was in despair. I came  
25 this close to turn around and tell them that I quit, because I  
26 could have got a job doing something else.

27                   So, I stayed, and I can safely say that in the  
28 nine months that Tomas and his staff have been there, we've



1 improved morale so much that when the Chula Vista Home opens, we  
2 will also be there to present the new workers with a form of  
3 labor-management to make sure that that type of thing doesn't  
4 happen to it, what happened with the Barstow Home.

5 So, I'm in support.

6 CHAIRMAN BURTON: Now again, name, organization.  
7 We have a lot of witnesses that are here. We have a lot of  
8 witnesses against, and then we have to allow Mr. Alvarado a  
9 chance to respond. So, we've got a time problem of immense  
10 proportions, not just with the hearing, but with the whole  
11 process.

12 MS. GOODMAN: Thank you, Mr. Chairman. My name  
13 is Virginia Goodman. I represent the California State Employees  
14 Association, part of an affiliation of SEIU.

15 I'm the President of the local district area that  
16 Mr. Alvarado is covering in that district.

17 I am in support of Mr. Alvarado's appointment.  
18 I'm also in support of our labor-management representative that  
19 just left us, Mr. Ted Burnett, because he worked very hard.

20 CHAIRMAN BURTON: Is he up for confirmation?

21 MS. GOODMAN: You need to put him up for some  
22 sort of confirmation. He has worked very diligently with  
23 Mr. Alvarado.

24 Mr. Alvarado has shown quite a support in making  
25 things turn and change in the area of management. I think that  
26 a lot of the disgruntled paperwork that you talked about,  
27 perhaps Mr. Knight had talked about stacks of paperwork  
28 regarding some complaints.



1                   CHAIRMAN BURTON: We will be hearing from them,  
2 okay? And I don't need somebody to tell us bad things about  
3 somebody.

4                   MS. GOODMAN: I have nothing bad to say about  
5 anybody.

6                   What I'd like to say is that I'd like to  
7 encourage, as we have done over there at the veterans home, that  
8 the employees utilize the services of the California State  
9 Employees Association representation team, so that if there are  
10 any grievances, there are avenues.

11                   I think that we're going to see a lot of good,  
12 positive things happening.

13                   Thank you.

14                   MS. WILSON: Greetings. My name is Valerie  
15 Wilson, and I am from Barstow, California.

16                   I've employed at the Barstow Veterans Home since  
17 day one. I am what you call an original employee there. I have  
18 helped everyone there. I am representing CSEA. I am the Senior  
19 Steward at Barstow. I am the first steward at Barstow.  
20 Anything that you would like to know about Barstow, I could tell  
21 you.

22                   I'm here in support of the confirmation of  
23 Mr. Tomas Alvarado. I am here to let you know that this  
24 gentleman has come in there. He has sat down with the veterans.  
25 His concern is the veterans. Also, he has told each and every  
26 staff member, take your shoes off; put their shoes on and see  
27 how they feel. This is their home.

28                   You know what, Senator? Continuity is what we

1 need. I've had a great loss. I lost my husband about six  
2 months ago to an aneurysm. He was in the Navy. I've lost my  
3 father. He was Air Force and Army. My sister. My two sons.

4 Sir, we need continuity at Barstow. Tomas  
5 Alvarado has put men there of high caliber, men that would  
6 listen to us, that would take the time.

7 Of course, we're going to have some employees out  
8 there that are activated and angry because of the corrections  
9 that are being implemented there.

10 But we need corrections to pass. We don't want  
11 to close.

12 I'm a widow now, sir, and I'm just asking you to  
13 keep Mr. Alvarado in place. We need continuity.

14 We have changed heads and changed heads. We need  
15 the continuity.

16 Thank you, everyone, for listening to me.

17 CHAIRMAN BURTON: Thank you, ma'am.

18 MS. BARAJAS: Good afternoon. My name is  
19 Griselda Barajas. I'm a member of the California Hispanic  
20 Chamber of Commerce.

21 We're here in support of Tomas Alvarado's  
22 confirmation.

23 CHAIRMAN BURTON: Thank you, ma'am.

24 MR. REECE: Good afternoon. I'm John Reece,  
25 District 13 Commander for AmVets, and I'm here representing the  
26 State Commander for AmVets.

27 We strongly support Tomas Alvarado's  
28 confirmation, and recommend the Committee do that.

1 Thank you.

2 CHAIRMAN BURTON: Thank you.

3 MS. REYES: Hello, Senator Burton, Members of the  
4 Committee. My name is Sylvia Reyes. I'm the current Chair of  
5 the Sacramento Hispanic Chamber of Commerce, Latina Network.  
6 And I also have 26 years' experience in health care.

7 I'm here today to support Tomas Alvarado. We have  
8 had many, many lengthy conversations since his appointment. I  
9 do want to reflect on his personal commitment, integrity, and  
10 the whole strategic effort that he has taken over this past  
11 year.

12 Please support him in this endeavor.

13 MR. LOPEZ: Hello, Senator Burton. My name is  
14 Louis Lopez. I am a private business owner here in town,  
15 Printwise. I'm also a member of the Hispanic Chamber.

16 I'm also Vice President of the Mexican-American  
17 Vietnam Memorial. I do not speak for that committee, but I do  
18 speak for myself personally.

19 I've known Tomas, and I'll tell you, the man  
20 speaks to the veterans and wishes the veterans all that we can  
21 get, all that we need. And we need your help to keep him here.  
22 And I honor my support to Mr. Alvarado.

23 Thank you.

24 MR. OROSCO: Senator Burton, Committee, I'm  
25 representing the California League of United Latin American  
26 Citizens, and we strongly urge you to support Mr. Tomas Alvarado  
27 as we do.

28 Thank you.



1 My name is Michael Orosco, O-r-o-s-c-o.

2 MR. RAMIREZ: Sir, my name is Frank Ramirez. I  
3 come representing David Rodriguez, the State Commander of the  
4 American GI Forum. He asked that I come and testify and provide  
5 support for Mr. Alvarado. He'd be here today except his mother  
6 passed away Sunday, so I come representing Mr. Rodriguez.

7 Thank you.

8 MR. LEIVA: My name is Mauricio Leiva. I'm with  
9 the San Joaquin Valley Latino Vote, and I'm here in support of  
10 Secretary Alvarado.

11 I believe that he's very open to ideas and  
12 suggestions about issues affecting the veterans of California.  
13 We strongly urge your aye vote.

14 Thank you.

15 CHAIRMAN BURTON: Witnesses in opposition.

16 MR. ORTEGA: Good afternoon, Members of the  
17 Senate Rules Committee, Senator Burton.

18 My name is a Samuel S. Ortega.

19 I think that Mr. Alvarado's an outstanding  
20 veteran, but not an outstanding administrator. And I want to  
21 talk about that.

22 As I indicated, my name is Samuel S. Ortega. I'm  
23 a resident of Sacramento. I'm a retired state employee, 30  
24 years of state service. I'm a life member of the Veterans of  
25 Foreign Wars, Post 85. I'm a Board Member of the Latino Senior  
26 Citizens in Action, and also a Board Member of the California  
27 Mexican-American Veterans Memorial, Incorporated.

28 I want to thank you for the opportunity to speak.



1 I'm in opposition of Mr. Alvarado's confirmation.  
2 I'm opposed to the confirmation of Mr. Alvarado because he does  
3 not possess the personal integrity to lead the Department, and  
4 he does not have the ability to perform the day-to-day  
5 responsibilities without controversy and without making  
6 administrative blunders.

7 My comments will be in three areas: A, willful  
8 violation of the Government Code to intimidate state employees;  
9 B, overt and persistent retaliatory conduct against state  
10 employees; and C, sexual harassment conduct against female  
11 employees of the Department of Veterans Affairs.

12 My professional background is that -- my state  
13 service, that is -- I was the Assistant Chief of the Appeals  
14 Division, State Personnel Board. For four years, I served in  
15 this capacity, and in this capacity I investigated hundreds of  
16 complaints regarding discrimination, sexual harassment,  
17 retaliation, and misconduct on the part of the state employees,  
18 including high level administrators.

19 My personal background, now that I'm retired, is,  
20 I'm President and sole owner of APA and Associates. And in this  
21 capacity, I am retained by clients to represent them in hearings  
22 before the State Personnel Board or before an administrative law  
23 judge.

24 The first part I want to talk about is the abuse  
25 of power and the willful violation of the Government Code  
26 Section so-and-so, and you'll see that later.

27 This is in reference to actions taken against  
28 state employees at Barstow. As you have heard quite often over

1 the last 18 months, about 10 employees have been restricted to  
2 their home in violation of the Government Code section. The  
3 employees affected are listed in the Handout Number One in the  
4 back of the report that I gave you. If you look towards the  
5 back pages, I think it's the fourth page. There's -- a list of  
6 all the employees that I'm speaking of are listed there.

7 And the next handout -- first, you'll note the  
8 number of employees and the number of days they've all been  
9 restricted to their homes. The results have been that most of  
10 them -- a lot of them have resigned, or most of them have  
11 returned.

12 The part I want to cover now is the section of  
13 the Government Code that they used to send these people home.  
14 Now, that's the Handout Number Two. You'll see in this handout,  
15 the bottom part, is the part of the Government Code which they  
16 used to send people home.

17 If you look above that, it's related to  
18 disciplinary proceedings. So, these people are not being sent  
19 home because they need counseling, or some kind of corrective  
20 action. There is intent here to do something adverse to these  
21 individuals.

22 The problem is, they never did.

23 Now, when they received their letters under this  
24 section of the Government Code, they're told, you're being sent  
25 home pending an investigation. The fact is, no investigations  
26 were ever done.

27 So, what's the bottom line? The bottom line is  
28 to really intimidate the employees, to harass them, to coerce

1 them into submission, or results are demotions, resignation, and  
2 transfer. And as you can see by the list of employees, that's  
3 happened quite often.

4 Now, where's the evidence that this is happening?  
5 We have two people that are going to testify a little bit later  
6 on. We have, for example, a Mr. Fernando Gandara letter, and  
7 it's Handout Number Five. Look at Handout Number Five.

8 Mr. Gandara asked, after he returned to work,  
9 where is the investigation? And the answer was, there is none,  
10 basically, is what this response is. If you want information,  
11 go to your personnel folder.

12 Well, he went to his personnel folder. There is  
13 no investigation. So, how is that Government Code being used?  
14 It's being used to basically intimidate people.

15 The same thing happened with Denise Hall. There  
16 was no investigation.

17 Then there is a matter of e-mail that was  
18 prepared by a Mr. Bob Gray. If you look at Handout Number Six,  
19 which is the next-to-the-last-page, this letter was sent from  
20 Bob Gray, the former administrator at Barstow. And he states in  
21 this correspondence that he was directed by Mr. Alvarado to  
22 place Dr. Alfonso Navarro on restricted leave. So, it's not  
23 something that the administrator at Barstow wanted to do. It's  
24 something Mr. Alvarado wanted to do.

25 Then Mr. Navarro eventually resigned, and he was  
26 home for 51 days at taxpayers' expense.

27 CHAIRMAN BURTON: I have a question.

28 The Code section says that the absence is not to



1 exceed 15 days.

2 MR. ORTEGA: And they have consistently exceeded  
3 15 days. And that's the thing I want to bring to your  
4 attention.

5 There are no provisions in the Government Code to  
6 exceed the 15 days. The Government Code is based on legislation  
7 that you folks have enacted.

8 And that message is clear: 15 days is 15 days.

9 Now, what happens to an individual when they  
10 receive this notice that they are no longer -- they're sent  
11 home, and they're kept there in suspense. What happens to them?

12 They lose their dignity. They lose their  
13 self-respect. Their suppression [sic] and career opportunities  
14 are basically tarnished.

15 It's like this. If you take this credit card,  
16 and you bend it, and you bend it enough times, you can break it  
17 apart, but you can't the first shot. But you keep it up, you'll  
18 get the result you're looking for.

19 As I indicated earlier, the Department has no  
20 discretion in exceeding the 15 days.

21 In the letter that Mr. Gandara received in reply,  
22 they themselves say, you were sent home for 30 days. So, they  
23 are admitting that they exceeded the limit from the Government  
24 Code.

25 And in regards to the union, it's unfortunate,  
26 but the union is not representing these employees the way it  
27 should be, although they testified in his behalf here. In fact,  
28 Wednesday and Thursday, there's a State Personnel Board hearing



1 in Barstow in which Mr. Alvarado's been subpoenaed to be there  
2 to testify, because he was involved in some retaliatory action,  
3 and the union representative, who was here testifying, does not  
4 want to be there to represent the employees. He'd rather be  
5 here, representing Mr. Alvarado. Now, can you figure that one  
6 out?

7 CHAIRMAN BURTON: Not for us to do.

8 MR. ORTEGA: I'm going to move along here.

9 As far as retaliation, I can just summarize that  
10 real quick, Senator.

11 On February the 9th, one week before a Personnel  
12 Board hearing in Barstow, Mr. Alvarado went to Barstow, and he  
13 singled out Mr. Gandara. Mr. Gandara is a warehouse worker.  
14 He's a low guy on the totem pole. He took him for a little  
15 walk, and he said -- he read him the riot act. What's your  
16 problem with general wide policy, and so on and so on.

17 The problem with that is, Mr. Gandara has got a  
18 hearing before the State Personnel Board on a charge of  
19 discrimination. And the law is clear. When you file as an  
20 employee a charge of discrimination, there is not supposed to be  
21 retaliation or harassment against you.

22 Now, if the Director singles out an employee at  
23 that level, what else could it be? Because it wasn't to  
24 compliment him.

25 Then you'll hear on retaliation, you'll hear from  
26 Denise Hall. Denise Hall is the Public Affairs person at the  
27 veterans home. A letter went to the Governor that had some  
28 controversial language in it. Mr. Alvarado thought that Denise

1 wrote that letter, and he called her from Sacramento to Barstow  
2 and told her, why are you betraying the Department? Without  
3 giving her any chance whatsoever to explain anything, and just  
4 basically intimidated her. That was one day, January 25th, I  
5 believe.

6 The next day, Mr. Manilow, who is the hospital  
7 administrator, gives Denise a letter saying, you're going home  
8 under this Government Code for 15 days. And not only 15 days.  
9 It was extended another 7 days.

10 In the end, there was no investigation. They  
11 just told her to come back to work. And that's the extent of  
12 retaliation that I see in this case.

13 I want to go to the last item, and that is some  
14 sexual harassment complaints against Mr. Alvarado.

15 One thing we have to understand in sexual  
16 harassment is that State of California process allows for a  
17 formal complaint or informal complaint. A formal complaint is  
18 an investigation. There's a report. There may be a hearing,  
19 and the documents are public.

20 However, the state process allows for an informal  
21 complaint. And most complaints are settled on an informal  
22 basis.

23 Now, you have before you two letters from females  
24 on a confidential basis, because they're treating these things  
25 as informal. They allege sexual harassment.

26 Mr. Alvarado says, it didn't happen. Somebody's  
27 lying. The ladies are lying or Mr. Alvarado's lying.

28 Now, you have those letters before you. I

1 believe that you have the authority to interview those ladies  
2 and determine for yourself whether they're telling the truth or  
3 not. I don't think that a confirmation is proper without  
4 getting to the facts and make a determine on the merits of the  
5 facts.

6 I want to summarize. I know you're pressed for  
7 time, Senator Burton. I'll summarize by saying this.

8 The three actions I talked about -- the violation  
9 of the Government Code, retaliatory conduct, and sexual  
10 harassment -- any one of those charges, any other administrator  
11 in state service would be dismissed. And here we have an  
12 individual with three charges.

13 And just because Mr. Alvarado is an appointee of  
14 the Governor doesn't make him immune to the state system and  
15 drop the protection that employees are entitled to.

16 With that, I'd like to conclude my remarks. If  
17 there's questions, I'd be more than glad to answer them,  
18 Senator.

19 Thank you.

20 CHAIRMAN BURTON: Thank you, sir.

21 Next.

22 MR. CANFIELD: Mr. Chairman, Members of the  
23 Committee, I am John Canfield. I've been a veterans' advocate  
24 here in the Capitol for over 25 years.

25 I'm here today speaking for Bob Hailey. And I  
26 think, according to Bob, that this has been distributed.

27 Basically, Mr. Chairman, our concern is the  
28 veterans. We are not concerned about who's heading the



1 Department. We are concerned about the treatment that the  
2 veterans get.

3 Some of the questions that have been raised by  
4 the Committee are absolutely great questions.

5 What happens when the two-year limitation runs  
6 out? I don't know. We are concerned about veterans losing  
7 their homes.

8 Mr. Chairman, there are a lot of witnesses, so I  
9 will make this short. We just urge the Committee to listen to  
10 the witnesses, and try to determine, is the Department better  
11 off 11 months after Mr. Alvarado took office, or is the  
12 Department worse off?

13 He certainly has had a difficult job, and I've  
14 been one of his severest critics. I promised him one time that  
15 if the Department or if he did something right, that I was proud  
16 of, I would publicly compliment him.

17 So, when the Barstow Home passed inspection, I  
18 wrote a letter to the editor of the Sacramento Bee,  
19 complimenting the Department, the Governor, the Secretary, the  
20 staff, all the way through, because folks, Committee Members, we  
21 need more veterans homes. And any bad publicity we receive on  
22 the operation of the home is just going to hurt the veterans for  
23 its future homes.

24 The Legislature has been great, both sides of the  
25 aisle. They've always approved veterans bills. The voters  
26 have voted for Cal-Vet bonds. And folks, we want to keep up  
27 that good record.

28 So, Mr. Chairman, I ask you to listen to the



1 veterans. I must admit, I did not intend to testify today, but  
2 I'm speaking.

3 CHAIRMAN BURTON: Good to hear from you and see  
4 you, sir.

5 MR. DEBBS: Mr. Chairman John Debbs, and I'm the  
6 Vice Chairman of the Cal-Vet Farm and Home Loan Program  
7 Investigative Committee.

8 We're a nonprofit association of Cal-Vet contract  
9 holders who have come together for the specific purpose of  
10 addressing the injustices and the grievances that we've suffered  
11 under the Department of Veterans Affairs.

12 I've prepared just a brief statement. I would  
13 like, if I could, to read it into the record.

14 CHAIRMAN BURTON: I see, your statement.

15 MR. DEBBS: It's very brief.

16 CHAIRMAN BURTON: Okay. The addendums will be  
17 made part of the record.

18 But even if you could summarize your statement,  
19 it would be helpful. We'll make it part of the record. So,  
20 just summarize.

21 MR. DEBBS: This is regarding Tomas Alvarado's  
22 complicity or incompetence, false statement and malfeasance in  
23 office relative to the diversions of hundreds of millions of  
24 dollars in the 1943 Fund or the Cal-Vet Home Loan Bond and  
25 Program monies.

26 Tomas Alvarado had a knowledge of and has acted  
27 with malfeasance in office, and has helped to conceal and made  
28 false statements regarding the fact that there have been massive

1 fraudulent diversions of hundreds of millions of dollars,  
2 perhaps billions, from the Cal-Vet federal tax-exempt bond sale  
3 generated monies.

4 Tomas Alvarado was first made aware of these  
5 facts and diversion of funds in the fall of 1997 by myself when  
6 he was campaigning for Governor Davis. At that time, I gave  
7 Tomas Alvarado all the documentation, or most of the pertinent  
8 documentation.

9 He indicated that it was too embarrassing for  
10 himself, being the former Deputy Director in charge of the  
11 Division of Farm and Home Loans, and for the Governor, who was  
12 at one time the State Controller. So therefore, the information  
13 would not be used.

14 More recently, in March, on March 16th, 2000, Mr.  
15 Alvarado in a letter addressed to John Canfield, whom you just  
16 heard from, made a false statement to Mr. Canfield relative to  
17 the diversion of funds. He states that, "your group should rest  
18 comfortably with the knowledge that the Department's operations  
19 are sound and without any hint of improper activity."

20 Nothing could be further from the truth. The  
21 documentation and financial data, the Department's own financial  
22 data, show that there's a massive, mathematical impossibility.  
23 That the \$5.6 billion that they say that was raised from the  
24 sale of bonds to make 75,000 new loans for Cal-Vet contract  
25 holders, this could not possibly have been done based upon the  
26 Department's own numbers.

27 Mr. Alvarado personally comes into play in this  
28 situation. He was Deputy Director from 1990 to 1994, and had

1 direct administrative responsibility over the Division of Farm  
2 and Home Loans. And during that period of time, about \$1.375  
3 billion was -- in bond fund money was never used, we believe, to  
4 make a single Cal-Vet Farm and Home Loan.

5           Roughly \$7 billion of program monies from about  
6 1980 through 1996 was used -- when I say program money, I'm  
7 talking about interest and principle monies as opposed to bond  
8 fund monies -- was used to help pay the bond cost on several  
9 billion dollars in bond debt that was never used to make a  
10 single Cal-Vet Farm and Home Loan.

11           Lastly, it's important to point out that  
12 veterans, Cal-Vet contract holders, have been charged the 8  
13 percent interest rate to help pay the cost on these bond debts  
14 when we should have been paying a 3 or 4 percent interest rate  
15 to help pay the cost on these bond debts.

16           We have tried to talk to Mr. Alvarado on a number  
17 of occasions regarding this, and it was to no avail.

18           I would like for you pay attention to the last  
19 page in the attachment I gave you. It's from the certified  
20 public accountant firm of Mr. John Maxey, who is currently doing  
21 an audit of the financial records of the Department of Cal-Vet  
22 Farm and Home Loan program funds. And it is clear that massive  
23 amounts of money have been diverted.

24           We would ask you, the Cal-Vet contract holders,  
25 the client group, would ask you to oppose Mr. Alvarado's  
26 confirmation.

27           The man is clearly incompetent. The man clearly  
28 has no idea of what has to be done on behalf of veterans. And



1 again, we ask a no vote on his confirmation.

2 Thank you.

3 MS. HALL: Good afternoon, Senators. My name is  
4 Denise Hall. I am the Coordinator of Volunteer Services and the  
5 former Public Affairs Officer for the past four years at the  
6 Veterans Home in Barstow. I have an excellent work history and  
7 performance evaluations.

8 On January 24th of 2000, Mr. Alvarado called me  
9 by telephone from Sacramento at my place of employment regarding  
10 a letter written and signed by Arthur Benton to Governor Davis  
11 complaining of the substandard care of veterans and the  
12 inefficient management and intimidation of employees. His tone  
13 of voice was angry.

14 On January 26th of 2000, I was accused of writing  
15 that letter and told by interim administrator, Mike Manilow,  
16 that, "You can come clean and resign, or we'll do an adverse  
17 action and you'll be terminated."

18 I was placed on two-weeks paid administrative  
19 leave pending an investigation. The leave was extended for an  
20 additional two weeks.

21 On February 11th of 2000, Mr. Alvarado was  
22 contacted by a reporter, and he stated to her that I had been  
23 placed on paid administrative leave for actions that could hurt  
24 the reputation of the home. He made that allegation with full  
25 knowledge that he ordered me home under Government Code  
26 sanctions relating to disciplinary proceedings.

27 On February 14th, I was called back to work and  
28 informed that my office was relocated to an isolated building



1 across campus. My duties were drastically reduced, and the  
2 public affairs functions were arbitrarily removed. And I was  
3 also told that there was no adverse action.

4 Although I was called back to work, I have been  
5 unable to do so for last two-and-a-half months.

6 The action taken by Mr. Alvarado to restrict me  
7 to my home and arbitrarily change the scope of my duties, the  
8 statements made by Mr. Alvarado during staff meetings that he  
9 will fire people on the spot if they don't like the rules and  
10 worry about the grievances later, "There's the God damned door,"  
11 and bragging that combat veterans are preferred, are against the  
12 state's Civil Service system standards.

13 There are other employees who wanted to come  
14 today but were too afraid to come forward and tell the truth for  
15 fear that Mr. Alvarado will make good on his promise to  
16 terminate.

17 I understand that by speaking to you today, I  
18 have placed myself in further danger of retaliation. It is  
19 important for me to do the right thing today and tell the truth,  
20 not only for myself, but for many others who have experienced  
21 similar treatment, are experiencing it now, and who may become  
22 victims in the future.

23 Senators, won't you please do the right thing  
24 today by not recommending the confirmation of Tomas Alvarado.  
25 Please, give us the civil and courteous workplace that state  
26 employees are guaranteed by law.

27 Thank you.

28 CHAIRMAN BURTON: Thank you very much, ma'am.

1 And no matter what happens, one of the things you don't have to  
2 fear is any retaliation by anybody. They will find out what  
3 retaliation really is.

4 SENATOR HUGHES: Mr. Chairman, I'd just like to  
5 ask the witness, did he say "There's the God damn door" in  
6 writing, or did he say it to you in person?

7 MS. HALL: At a staff meeting.

8 SENATOR HUGHES: At a staff meeting before other  
9 individuals, he disrespected you --

10 MS. HALL: Yes.

11 SENATOR HUGHES: -- as a person. Thank you very  
12 much.

13 MS. HALL: Well, not to me. He didn't say that  
14 specifically to me. It was in a blanket statement.

15 SENATOR HUGHES: To anybody that they felt the  
16 shoe fit, they could wear it. Thank you.

17 MS. HALL: Yes.

18 CHAIRMAN BURTON: Just one question.

19 Yours was a 20-day suspension, although the law  
20 only allows 15?

21 MS. HALL: It was for two weeks, and then, the  
22 day before the two weeks was up, I received by Federal Ex from  
23 Sacramento an extension of that.

24 CHAIRMAN BURTON: I don't think the Code reads  
25 that way.

26 Thank you.

27 Sir.

28 MR. MacCLANAHAN: Mr. Chairman, we traveled

1 together. We've only got one walker.

2 [Laughter.]

3 CHAIRMAN BURTON: So much for the wonderful  
4 treatment of veterans.

5 MR. MacCLANAHAN: My name is George MacClanahan.  
6 I am privileged to be a resident of the California Veterans Home  
7 at Yountville. I am beginning my fifth year there.

8 In the last year-and-one-half of that stay, it's  
9 only been possible because of a life-saving operation that was  
10 performed on me at the Medical Research Facility at the  
11 University of California at San Diego. The procedure it was  
12 employed was considered to be somewhat experimental, and was not  
13 available at other medical facilities in the area.

14 I have been told by qualified medical authorities  
15 that the saving of my life comes close to being a medical wonder  
16 of sorts. That operation was facilitated by and performed under  
17 the auspices and through the intervention of the medical staff  
18 and the Veterans Home at Yountville.

19 I literally owe my life to the Home and to the  
20 professional staff that is employed there, who diagnosed my  
21 ailment, and had the knowledge of proper method and the  
22 facilities available for surgical intervention, together with  
23 their will to make it happen. Without them, I would have died.  
24 Because of them, I can look forward to an unknown number of  
25 additional years of productive life, which I intend to use  
26 working for the betterment of conditions affecting the lives of  
27 veterans.

28 It is my determination to pass on to the members



1 of this fragile and rapidly disappearing brother and sisterhood  
2 the hope and inspiration that others have bestowed upon me.  
3 Nothing short of that intention could prompt me to come here and  
4 deliver the statement I am about to make.

5           Veterans of all kinds and distinctions go to the  
6 veterans home to spend the last years of their lives. They go  
7 mostly because of ill health, but sometimes they go because they  
8 are lonesome, or afraid, or impoverished, or apprehensive, or  
9 troubled, or uncertain, or because they feel misplaced at the  
10 time in the outside world, and the values of that world are no  
11 longer their values.

12           In many cases, they go because they want to be  
13 near those with whom they share a kinship. That is to say,  
14 other veterans.

15           Except in rare instances, the home is not a  
16 rehabilitation facility intended to retrofit members for return  
17 life outside the home.

18           It is instead a last refuge for them, a haven,  
19 and for when there is need for such services that has a hospital  
20 with a remarkably capable understanding and caring staff.

21           And finally, it has a veterans cemetery where  
22 their comrades wait.

23           But until their time for that transition comes,  
24 these men and women need recognition for the contributions they  
25 have made to society and to their country. They need the  
26 respect that is their due for the path they chose at a time when  
27 America's future was on the line. And beyond that, simply for  
28 the accumulated wisdom of their years.



1                   They certainly do not need to be made to feel  
2 like the village idiot or a social pariah. At a time when  
3 Mr. Alvarado had first come on board as Deputy Secretary under  
4 James Ramos, John Schumucker, who sits beside me, and I met with  
5 him on the subject of the Post Fund.

6                   When Governor Davis appointed Mr. Ramos as  
7 Secretary of the Department of Veterans Affairs, I asked for a  
8 meeting with Ramos regarding the future of the fund. I was then  
9 Chairman of the Post Fund Budget Committee for the Allied  
10 Council.

11                  Mr. Ramos agreed to a meeting in Sacramento, and  
12 asked me to bring John Schumucker along. Mr. Schumucker was at  
13 the time the Chairman of the Allied Council.

14                  When we arrived for the meeting, Mr. Ramos was  
15 otherwise occupied and asked Mr. Schumucker and me to meet with  
16 Mr. Alvarado.

17                  After the conversation had touched on some other  
18 things, I brought up the matter of the Post Fund. The instant  
19 Mr. Alvarado understood that I was going to express an opinion  
20 and perhaps offer some advice about the fund, he interrupted me  
21 in midsentence say, "You don't even know what the hell you're  
22 talking about."

23                  He didn't bother waiting to hear what I had to  
24 say. His manner was insulting, and his comment was clearly  
25 designed to bully me into silence about a subject of which he  
26 knew nothing at all, and was not prepared to discuss. He simply  
27 took the standard company line. Any other action, such as  
28 listening while a Home member expressed his or her views would

1 have been beneath his dignity and totally out of character.

2 I have no doubt that Mr. Alvarado had been  
3 briefed on my role as an activist in the effort to save what  
4 little remained of the Post Fund resulting from the predations  
5 of the administration in Sacramento that began during the  
6 economic recession of the early '90s and continued until the  
7 Legislature rescued the Fund last year.

8 This angry, parental type of posturing has been a  
9 common defense that has been universally used whenever there is  
10 the least hint of dissent or activism on the part of Home  
11 members for as long as I have lived in the Home.

12 During my residency at the Home, I have worked  
13 continuously at the Member Employment Office, except for about  
14 seven months when I was recovering from my operation. Member  
15 Employment, although not originally intended to be the exclusive  
16 function of the Post Fund, had gradually become totally  
17 dependent on the Fund due to the Fund's convenience as a source  
18 of nonappropriated capital which the administration could spend  
19 without legislative oversight.

20 The Post Fund, now renamed Moral, Welfare and  
21 Recreation Fund, is best described as a public endowment to the  
22 Home's membership from the citizens of California.

23 As part of my job, I contributed to the periodic  
24 entries into the records of the Fund, and in the furtherance of  
25 that activity, I made a comprehensive analysis of the trends of  
26 Fund balances and expenditures.

27 At the time the Davis administration was ushered  
28 in, I probably knew as much about the Fund, at least the Member

1 Employment aspects of it, as any person in the Department's  
2 Finance Section, whether in Sacramento or in Yountville.

3 For one thing, I knew the Fund was heading for  
4 insolvency within the next three years and so warned the  
5 administration. Actually, it happened in one year.

6 I also knew that its precipitous depletion was  
7 directly attributable to the illegal and irresponsible  
8 diversions made by Department officials to defray certain  
9 operating costs of the Home.

10 When Mr. Alvarado made his disparaging comment,  
11 by its tone and manner suggesting that I was nothing more than  
12 meddling ignominy, all the hope that had come with Governor  
13 Davis' electoral victory, and Mr. Ramos' appointment, escaped  
14 like hot air from a punctured balloon.

15 It is a very humiliating experience to have one's  
16 concerns dismissed so scathingly, especially in front of one's  
17 friends, as though they were nothing more than frivolous  
18 claptrap.

19 It was also extremely rude on the part of  
20 Mr. Alvarado to do so, and it speaks volumes about his complete  
21 lack of leadership skills.

22 Fortunately, Mr. Ramos came in at that precise  
23 instant and invited Mr. Schumucker and me into his office, and  
24 the meeting with Mr. Alvarado ended.

25 It is no great secret that for the last four  
26 years, of which I have a personal knowledge, and for at least  
27 another five preceding that, this agency that is entrusted with  
28 the care of California's aging war veterans has been staffed in



1 its upper eschelons by officials who have themselves displayed,  
2 and permitted in their underlings, an attitude of contempt for  
3 the veterans in their care. That attitude is so prevalent, in  
4 fact, that people both in and out of the Home have begun to  
5 accept it as the norm.

6 On January 30th, I wrote a letter of reprimand to  
7 the Deputy Administrator of the Home for the derogatory manner  
8 in which he addressed Home members during a meeting that I  
9 chaired. That man is an appointee of Mr. Alvarado.

10 On April 1st, I was advised -- in April I was  
11 advised by at least seven other sources, including two state  
12 employees, that the man continued to verbalize disrespect  
13 directed at the Home membership.

14 I wrote another letter to him, sending copies of  
15 that letter and the first letter to a number of people,  
16 including Mr. Alvarado. Soon after, the Deputy Administrator  
17 made a precipitous departure from the Home, and I was advised by  
18 an official of the Department that, while he would continue his  
19 employment with the Department, he would no longer be involved  
20 with Home responsibilities.

21 Last Tuesday, I found out that this man, who  
22 holds such low opinions of Home members, was working in the  
23 Sacramento office, preparing the Home's budget for fiscal  
24 2000-2001. That is disgusting.

25 It is not unusual for Home members to be lied to  
26 by officials of the Department. It happens regularly and with  
27 impunity.

28 The real crime here is that an individual who



1 holds such alien views towards veterans was given carte blanche  
2 authority to prepare the Home's budget. This is the same  
3 individual who prepared last year's budget, and the Home is now  
4 3.9 million in the red as a result.

5           Rather, he should have been discharged. The  
6 individual, who protects and defends him, dishonors the Governor  
7 and he dishonors the Home members, and he dishonors his fellow  
8 employees.

9           Such a state of affairs is unconscionable, and  
10 the very idea of these kinds of conditions should be abhorrent  
11 to even the most callous and disinvolved person. No other  
12 single issue outstrips in order of magnitude the hurtful act of  
13 crushing the human spirit. When that spirit resides within an  
14 elderly person, man or woman, especially one who has spent a  
15 lifetime trying to do what is morally right, it is a devastating  
16 and de-humanizing experience.

17           Mr. Chairman, you are in receipt of some  
18 testimony and a letter, I believe, signed by the Chairman of the  
19 Allied Council endorsing Mr. Alvarado for the position of  
20 Secretary of Veterans Affairs. The assertions in that letter  
21 are fashioned of whole cloth, without a shred of truth. Not a  
22 hint of a canvass was ever made to determine what the 1,125 Home  
23 members actually do think on the subject of Tomas Alvarado as  
24 Secretary of the Department, if, in fact, they have a preference  
25 at all and would dare to voice it.

26           As to the preference of the Home's 900 employees,  
27 to say that they endorse Mr. Alvarado is the rankest joke  
28 conceivable. I have asked everyone in sight, and I find very

1 few votes, member or employees, for Mr. Alvarado.

2 I don't know why the Chairman of the Allied  
3 Council misstated the facts in such a potentially damaging way.  
4 Perhaps he thought it was the politic thing to do.

5 The leadership of the 3 million veterans that  
6 reside in California should rest with a man or a woman who holds  
7 the veterans' interest, rather than his own, close to their  
8 heart. Mr. Alvarado misses the mark widely in that regard.

9 The responsibility of the protection and well  
10 being of veterans should lie with one who is, in fact, a  
11 veterans' advocate. Not just one who claims that distinction,  
12 but one who believes in advocacy to the extent that he will not  
13 tolerate, from any source, the self-serving desire to humiliate  
14 the meek or the less fortunate, as we have seen is the ultimate  
15 expression of Mr. Alvarado's style.

16 Mr. Alvarado carries far too much baggage, some  
17 of it of the sleaziest kind, damning if true, and unfortunate  
18 even in its best light, to be an unifying and effective voice in  
19 the advancement of veterans' interests.

20 Finally, he has neither the temperament, the  
21 education, nor the experience to do an adequate job of directing  
22 the personnel of the Department of Veterans Affairs and the  
23 demanding task of rebuilding the Department from the ground up,  
24 which must, by definition, be the backbone and the heart of any  
25 effort to make the Department worthy of the 3 million veterans  
26 it represents, and who Governor Davis has indicated it is his  
27 intended purpose to honor.

28 Thank you, Mr. Chairman.

1 CHAIRMAN BURTON: Thank you, sir.

2 MR. SCHUMUCKER: My name is John Schumucker. I am  
3 the past Chairman of the Allied Council for the past three  
4 years, up until this year.

5 In preparation for this paper, George asked me to  
6 review it and to edit it. I did. I endorse it completely.

7 CHAIRMAN BURTON: Thank you.

8 MR. ORTA: Mr. Chairman and Members, my name is  
9 Jesse Orta. I am a life member of the Veterans of Foreign Wars,  
10 the AmVets, the Retired Officers Association, and a number of  
11 other veterans organizations.

12 I testified before Senate Rules a number of years  
13 ago as a state employee and paid the price. And some people are  
14 not willing to come forward.

15 I'm here today to introduce into the record a  
16 summary of the comments by Mr. Bob Haily, a veterans' advocate  
17 and lobbyist here for many years, which will become familiar to  
18 you. But he could not get medical clearance because of his  
19 injuries to come before you. I have his comments to present.

20 Mr. Chairman and Members of Senate Rules, this  
21 confirmation hearing addresses one of the most important --

22 CHAIRMAN BURTON: We have them as part of the  
23 record, so you could just summarize.

24 MR. ORTA: This is one of the most important  
25 veterans issues over the last 20 years, and I respectfully  
26 submit that veterans issues are not and should not be partisan  
27 issues. It has been my experience in my more than 15 years of  
28 legislative experience in representing the American Legion and



1 all California veterans here, at the State Capitol, that both  
2 sides of the aisle equally support the best interests of  
3 California's war veterans.

4           Premiums for the Cal-Vet Loan Program have been  
5 drastically increased, and coverages have been reduced. A  
6 recent audit of the County Veterans Service Office Program  
7 points out serious shortcomings in the provision of first-line  
8 services through this particular program. This fact can be  
9 directly attributed to the Department's weak management, lack of  
10 leadership responsibility, and a specific failure to enforce or  
11 comply with federal and state statutes designed for such  
12 oversight and control.

13           Dan Walters' article in the Sacramento Bee just a  
14 few months ago makes the point. The California Department of  
15 Veterans Affairs is clearly the worst department in California  
16 state government through sheer managerial ineptness.

17           The Department of Veterans Affairs is not alone  
18 in responsibility for the lack of viable administration of  
19 veterans' benefits and entitlement. Most major veterans  
20 organizations consistently endorse weak or incompetent  
21 candidates based on personality or favors. It is often said by  
22 rank and file veterans that there is more political posturing in  
23 the hierarchy of their own organizations than there is in the  
24 State Capitol.

25           Such endorsements submitted here today will serve  
26 as a good example of the will of the elite leadership, and not  
27 necessarily of the membership.

28           Another entity which must share the



1 responsibility for the years and years of poor performance of  
2 the Department of Veterans Affairs is the California Veterans  
3 Board. The Board has the statutory responsibility to set all  
4 policy for the Department in the best interest of California's  
5 3-plus million veterans.

6 CHAIRMAN BURTON: Sir, I wonder if you might be  
7 able to summarize, because we do have it for record. There's  
8 other people, and we do have to be out of this hearing room at a  
9 time certain.

10 MR. ORTA: Members of the Committee, the  
11 Department of Veterans Affairs' administration and management is  
12 broken, has been for a number of years. Today's candidate was  
13 previously a part of this same management team as Deputy  
14 Director during the Pete Wilson administration, a position he  
15 surrendered under considerable pressure.

16 During the 11 months that this candidate has  
17 presided, the situation has only worsened, and to confirm him  
18 today will only ensure the perpetuation of the status quo.

19 California war veterans' time has run out. It's  
20 time to appoint a Secretary with the ability to get the job  
21 done.

22 Thank you very much.

23 CHAIRMAN BURTON: Sir.

24 MR. DEW: Good afternoon. My name is Lionel Dew.  
25 I reside in the Victor Valley. I am a 21-year Air Force  
26 retiree.

27 Within the 21 years of being in the military,  
28 I've learned a great deal as relates to management. One of the

1 things that disappoints me today is that I come here all the way  
2 from Victorville, listening for or wanting to hear the  
3 accomplishments of the current administration headed by  
4 Mr. Alvarado. I heard none.

5 I wanted to hear about the efficiency. I want to  
6 hear about the progress that was made. I want to here about the  
7 successes. I want to hear about a plan. I heard none of that.

8 In fact, one of the most disappointing things, I  
9 believe that Mr. Alvarado's testimony cuts against him. In  
10 itself, it was something that was truly something that I didn't  
11 expect.

12 Mr. Alvarado mentioned that a consulting team was  
13 brought in, in Barstow Home, regarding the documentation to have  
14 the physicians, nurses, and medical staff to document. But as  
15 we all know, doctors, nurses and medical staff are trained to  
16 document. There wasn't a need for consultation. What was  
17 needed was enforcement; enforcement to document, because after  
18 all, that's what they get paid to do. That's what they're  
19 trained to do. And that's what should have taken place.

20 What is needed is, clearly, a person outside the  
21 box, not a deputy who moves up to become the Secretary of  
22 Veterans Affairs, but clearly somebody out of the box. Why?  
23 For three reasons.

24 If you really want to have a new page, a new  
25 tomorrow, a new beginning, you're going to have to find someone  
26 outside the box to do that. That person would deliver to  
27 veterans three things. One, equal access; equal opportunity;  
28 equal treatment. That's something that's critical. It's

1 important. Every American deserves it, and veterans deserve it  
2 no less than anyone else.

3 I urge you not to necessarily vote against  
4 Mr. Alvarado, but vote in fact for a new beginning, a fresh  
5 start, because it's definitely needed.

6 If someone has been part of the problem, I see no  
7 way how they can be part of the solution.

8 Thank you.

9 DR. SEKHON: Mr. Chairman, I'm Dr. Arjinderpal  
10 Sekhon.

11 I had the opportunity of serving the United  
12 States Army at the rank of a full Colonel, and I was a Commander  
13 of three medical units. One of the units I was commanding,  
14 Alfonso Navarro, Dr. Navarro, was under my command and also  
15 Major Gandara.

16 I find those people to be excellent, excellent  
17 officers in the United States Army. They both served with me  
18 during Desert Storm.

19 Losing Mr. Navarro, or Dr. Navarro, from the  
20 Veterans Home is the biggest loss the California veterans can  
21 have.

22 By looking and listening to Mr. Alvarado, I don't  
23 think he has any leadership qualities. A person who does not  
24 know what his people have, and what kind of qualities they have,  
25 and does not pick up the right team, always lose.

26 I don't think he -- he may be an excellent person  
27 with a great record, being a veteran. I respect him for that.  
28 But I don't think he has the capability to be a commander of any



1 unit. And he should not be appointed as Secretary, because if  
2 he has any sense, he should have never let Dr. Navarro leave  
3 that job, because that person was one of the best officers I  
4 ever served during my 15 years in the United States Army.

5 Thank you.

6 CHAIRMAN BURTON: Thank you, sir.

7 MR. AMARO: Thank you, Mr. Chairman. My name is  
8 Alan Amaro, A-m-a-r-o. I'm one of the, as somebody called  
9 earlier, rascals that sent you a lot of this information that  
10 you had to digest.

11 I'm going to be short and brief as I possibly  
12 can, because I've sent you all this information.

13 CHAIRMAN BURTON: Yes, and we have it all.

14 MR. AMARO: Well, then, I'm going to give you  
15 some personal experience about what has happened within the last  
16 couple weeks. And I'd like to let you know about that so you  
17 can make further considerations.

18 First off, Mr. Alvarado says it was the previous  
19 administration, previous administration. He was part of the  
20 previous administration. So, if there's any fault, accept  
21 that.

22 His attitude is chiefly lacking in the respect  
23 that I've been two public forums within the last year, one being  
24 within the last two weeks, where Mr. Alvarado stood up in a  
25 public forum, with not only military veterans and their  
26 dependents there, but public agencies and public utility  
27 companies.

28 Mr. Alvarado talked about his slash-and-burn



1 tactics, and who he'd fire, and how he fired all these people.  
2 And he pointed to the person that was next to him, Mr. Ron  
3 Branch, said, "I'll fire you also if you don't do what I say,  
4 and I'll take everybody to task." He said, "I don't care what  
5 anybody tells me, I'll suffer the consequences later."

6 That is not a leader. Mr. Alvarado is his own  
7 worst enemy.

8 I come here today before you. I have nothing to  
9 lose; I have nothing to gain.

10 Those that have testified before you have  
11 something to lose or gain. I'm talking about the supports, not  
12 every single person. But I hope you, and I know you do, because  
13 I've testified here before, understand that there's pros and  
14 cons to everything.

15 My summary would be, Mr. Alvarado personally, and  
16 in my own presence, is a rude individual, lacks the leadership  
17 qualities that California -- that establishes, and I say this  
18 great state has established not only economically,  
19 electronically, sets the pace for the rest of the nation.

20 If we offer the rest of the nation someone of  
21 this moral character, then we get what we deserve.

22 Thank you very much.

23 CHAIRMAN BURTON: Thank you, sir.

24 MR. DOLMAN: Senator Burton, Members of the  
25 Committee --

26 CHAIRMAN BURTON: Please, sir, summarize.

27 MR. DOLMAN: It's going to be quick. Could I  
28 have about two minutes, maybe.

1 CHAIRMAN BURTON: You've got it.

2 MR. DOLMAN: I'm a native San Franciscan, by the  
3 way.

4 CHAIRMAN BURTON: You've got 10 minutes.

5 [Laughter.]

6 CHAIRMAN BURTON: And from the Mission District,  
7 I'll warrant.

8 MR. DOLMAN: South of the slot. You've got it.

9 CHAIRMAN BURTON: South of the slot, you've got  
10 20 minutes. Go for it.

11 [Laughter.]

12 MR. DOLMAN: I'm a Navy veteran of both World War  
13 II and Korea. My name is Robert Dolman, D-o-l-m-a-n.

14 The past 16 years, I've served as President and a  
15 member of the San Andreas Veterans Memorial District, and 4  
16 years ago -- 5 years ago, Governor Wilson appointed me to his  
17 task force and subsequent commission to acquire land in Southern  
18 California for the veterans homes at Barstow, Chula Vista,  
19 Lancaster, and Ventura. I worked with Senator Pete Knight very  
20 closely over those years.

21 The last four years, I have served as a member of  
22 the California Veterans Board. I just completed my term here a  
23 few weeks ago. I served there as a member, Vice Chairman, and  
24 Chairman.

25 Since my letter to you and the Committee here on  
26 the 15th of April, it has come to my attention that Veterans  
27 Board, including Tomas Alvarado, sitting next to me, who is both  
28 a member of the Board and Secretary of the Department, is aware

1 of Sections A-6 and A-7 of the Veterans Policy Book, which  
2 mandates, quote, "the Secretary to present to the Board for its  
3 prior review and consideration all requests for proposal and  
4 invitations for bids where the anticipated amount of the  
5 contract is in excess \$250,000."

6 I then gave four Minutes -- December, January,  
7 February, and March to present. The Minutes reflect there in  
8 December that this was properly done, with the Bond Finance  
9 Division consulting contract in the approximate amount of  
10 \$750,000 was approved by the Board as was required to do.

11 January 8th Minutes show Mr. Alvarado present and  
12 remained mute when Board Chairman stated, quote, "There has been  
13 no new activity of policy and procedures, and nothing new this  
14 month to bring before the Board."

15 Alvarado was at that instant negotiating a  
16 sole-source consulting contract in the amount of \$850,000 with  
17 Len Blair and Associates for the January to September period of  
18 this year to help bring up the standards at the Barstow  
19 facility. That source was the L.A. Times, which I've already  
20 furnished you.

21 On February 26th, the Minutes then reflect  
22 Mr. Alvarado stating, quote, "official word has just been  
23 received that the Department of Health Services for the Veterans  
24 Home at Barstow is in compliance with regulations."

25 He then said, "There are still some areas that  
26 need a little more attention," but did not mention the  
27 sole-source contract of \$850,000 nor the terms thereof.

28 And one person and one contract is tantamount of



1 sending a lettuce leaf via a rabbit. You're supposed to laugh  
2 at that one. Think about it.

3 CHAIRMAN BURTON: I didn't even understand it.

4 MR. DOLMAN: One person and one contract of that  
5 magnitude, no one else knows about it, now you got it.

6 The Sacramento Bee articles of April and May  
7 state the Department of Veterans Affairs spent so much money to  
8 get the Home recertificated, we're now curtailing spending at  
9 Barstow to avoid going over budget. And this is reducing  
10 day-to-day assistance for patients even further.

11 Finally, Tomas Alvarado has placed Governor Davis  
12 in a most embarrassing position. And our Governor and fellow  
13 veterans do not deserve this.

14 The only mistake made was to appoint Alvarado in  
15 the first place. His track records over the past ten years is a  
16 fiscal disgrace: total lack of leadership and a complete void  
17 of business knowledge, integrity, and compassion.

18 Tomas Alvarado has cost California taxpayers  
19 multi-millions of dollars unnecessarily, which increases daily.

20 I respectfully request the Members of the Rules  
21 Committee to spare our 3.1 million veterans, United States  
22 veterans, now residing in California from further dereliction by  
23 Tomas Alvarado, as has been heaped upon us, and reject his  
24 confirmation as Secretary of Veteran Affairs.

25 Thank you.

26 CHAIRMAN BURTON: Thank you, sir.

27 Ma'am.

28 MS. JONES: My name is Lynne Jones. I'm a



1 Cal-Vet -- my husband and I are Cal-Vet Loan -- Farm and Home  
2 Loan. And to the day, yes, we have not had our home foreclosed,  
3 but I have received notices that I will be having my home  
4 foreclosed because of the disability insurance.

5 So, I'd like to know what's going to be done?

6 My husband has passed the two years, the 24  
7 months, whatever you want to call it, and we've been paying  
8 since '85. And we were told it would be to the length of the  
9 disability.

10 Now we're in a position of losing that home.

11 CHAIRMAN BURTON: Thank you.

12 MR. GANDARA: Hi, I'm Major Gandara, the  
13 gentleman that Colonel Sekhon, my fellow commander, and Colonel  
14 Navarro, my former supervisor, alluded to.

15 I am one of the rascals. I am one of the  
16 victims of the Barstow Veterans Home. I have felt Tomas  
17 Alvarado's wrath through himself directly and through his  
18 supervisors at the Veterans Home, because I made a fatal mistake  
19 of wanting to file a discrimination complaint because of the  
20 misconduct that was occurring at the Home.

21 I'll make my presentation really short.

22 Out of the 13 individuals that have received  
23 administrative time off, which is equivalent to house arrest,  
24 where we stay home, that is at taxpayers' expense. I have gone  
25 to find assistance, because never in the whole time the Under  
26 Secretary Alvarado and now Secretary Alvarado has been in the  
27 DVA, did he ever make an effort to ask me what was my problem.

28 I did have the unfortunate opportunity to run

1 into Mr. Alvarado, because, as Sam Ortega mentioned, he came to  
2 my place of employment and singled me out. Took me outside the  
3 building, and said, "what's your problem? I hear you have an  
4 attitude."

5 I said, "No, I don't."

6 I'm a Major in the Reserves. I follow orders.  
7 But I have a right to my opinion.

8 I've been under this malicious misconduct for two  
9 years; two years. I have gone to the Department of Fair  
10 Housing, to the EEOC, to the State Personnel Board, to the Labor  
11 Commissioner, to the Board of Licensing, to report Mr. Bill  
12 Regoli for his malicious manipulation of employees at the Home.  
13 I have gone to the Inspector General, Jerry Hanson. They come  
14 and they go. They want to hear the truth, and they do nothing.

15 I've even written a letter to the Governor, and  
16 he has done nothing. And if the Governor's not interested in  
17 holding Tomas Alvarado accountable, how can he ever be expected  
18 to be in compliance?

19 I'm shocked to see the Union here. I couldn't  
20 even get them to come to my hearing, but they were here for  
21 Mr. Alvarado.

22 I filed eight Union grievances. I've even spoken  
23 to Bruce Thiesen. I've talked to the Personnel Officer, Joy  
24 Hempstead, and nothing has happened. Mr. Alvarado has the  
25 audacity to say he's not aware of any problems. I find that  
26 shocking.

27 As my co-worker, Denise Hall, had mentioned, I  
28 also sat in the room when Mr. Alvarado stood there and addressed

1 75 of us; three meetings that day. And he was vulgar, and he  
2 was racial. He did say to everyone as a whole, "If you don't  
3 like my policies, there's the God damn door. I will file you  
4 first before, and I will deal with the legal consequences  
5 afterwards."

6 And what really disturbed me was that he referred  
7 to himself as "the little, short, fat Mexican" in that hearing.  
8 I'm an American of Mexican descent, and I find that very  
9 offensive, that the Secretary of my Department can use such  
10 racial slurs during an open meeting like that.

11 I, too, was once a commander of the 349 General  
12 Hospital. We do not talk to our subordinates like that. They  
13 can't even lead by example in the DVA, and that's pretty sad.

14 So, your vote today to confirm or not confirm  
15 Mr. Alvarado basically determines whether myself, and Denise  
16 Hall, and the other employees that are fearful of retaliation,  
17 and believe me, it does exist, if we will continue to be victims  
18 of Tomas Alvarado's regime, is basically what it is, a regime.

19 That's all I have to say. If there's any further  
20 questions -- and I apologize.

21 CHAIRMAN BURTON: No problem, sir, not at all  
22 Ma'am.

23 MS. POWERS: Good evening. My name is Phillis  
24 Powers, and I'm the former Executive Officer to the California  
25 Veterans Board. And I'm a very proud daughter of a deceased  
26 veteran who died a year ago from being exposed to atomic bombs  
27 ten times.

28 Before my father passed, he said, "Continue to



1 fight the fight. I'll help from the other side. You do this  
2 side, daughter," and I said, "Okay, Dad."

3 When I started working for the Board, we had no  
4 computer, we had no fax machine. We had no copier. We had no  
5 typewriter. So that I had go outside the building to the sixth  
6 floor to get to know how the Department worked, and also get  
7 some equipment donated to the Board so that I could function and  
8 do my job.

9 In it, I didn't understand where policy was at,  
10 because no one knew where policy was at. So, I asked Hal  
11 Jackson, who was the counsel at the time, what runs this  
12 Department of Veterans Affairs? He said, "Phillis, if you don't  
13 know anything else, go by the Military and Veterans Code Book."

14 The Military and Veterans Code Book has been in  
15 force since 1946. It was put together by our veterans and  
16 distinguished Legislators like you, you gentlemen and women. We  
17 already have laws on the books. What the problems that happen  
18 is that we don't have any of our administrators enforcing the  
19 laws that are on the books, which cause these continual  
20 problems.

21 One, an example, is the Cal-Vet Life and  
22 Disability Insurance Program. The way the Board heard about it  
23 was in the Sacramento Bee, August of 1996. We were unaware of  
24 any problems whatsoever.

25 I had got a flurry over 500 calls in one week.  
26 The Board didn't know what was happening.

27 A month later, in August in Monterey, that's when  
28 the Department told us what the problems were. I was



1 overloaded. I was the only staff member. We were getting a  
2 thousand complaints in. I could no longer handle it.

3 Senator Johannessen, Assemblyman Baca, all these  
4 hearings have been over and over, just talking about all the  
5 problems that are happening with the Department of Veterans  
6 Affairs.

7 Mr. Alvarado follows the same pattern that has  
8 been passed down for 40 years. I researched the files from 1963  
9 to 1996 before they let me go. It's same pattern. Hearing  
10 after hearing, the same problems, the lack of our veterans being  
11 cared for, the book not being enforced.

12 So, I would just ask you Legislators, that's what  
13 we put you in law, in your positions for, to please help and  
14 protect our veterans, and to enforce the Military and Veterans  
15 Code Book. We already have laws on the books. They just need  
16 to be enforced.

17 CHAIRMAN BURTON: Thank you, Ma'am.

18 MS. POWERS: Thank you.

19 CHAIRMAN BURTON: Sir.

20 MR. BENTON: Good afternoon, Senators. My name  
21 is Arthur Benton.

22 I am the one that started the letter to the  
23 Governor.

24 The Department of Veterans Affairs, the motto  
25 used to be, "Putting Veterans First." Now it's "Serving  
26 Veterans Since 1946." What are they serving?

27 The discrepancies, we can go through all this.  
28 You've heard them all, all the innuendoes and everything else.

1           But I would like to know, and if somebody can  
2 answer me, where is the US DVA Inspection Report? It hasn't  
3 been signed off.

4           The morale out there at that Barstow Home -- and  
5 I have been there since day one, when the first shovel was  
6 throwed of dirt to start the building, the people there -- I  
7 don't know. I have the letters from -- and Mr. Alvarado says he  
8 does not know me? Well, that's awful funny.

9           He called me at home regarding the letter to the  
10 Governor, and my comment was, I had just come back from SEC, and  
11 I was not ready, and I couldn't answer him. If he would give me  
12 a second, and he went off on me. And I told him, in point-blank  
13 words was, I don't have to listen to this, you ass hole, and  
14 hung up.

15           I don't know if you have read any of this, or  
16 read of these, but I've lost my point.

17           CHAIRMAN BURTON: You're making it.

18           MR. BENTON: And I am so sick of this Barstow  
19 Home the stuff that's been said out there. The employees, the  
20 nursing staff, the doctors, the veterans themselves have wrote  
21 these letters, and the only way I said I could tell them to help  
22 me was that they wrote these letters and signed them in black  
23 and white.

24           I did that. I sent them to the Governor, and  
25 this is what happens, and this is what we pick to represent our  
26 veterans? I don't think so.

27           To me, I would not -- I would not put my worst  
28 enemy or my relatives in that Barstow Home, because I would fear

1 for their lives.

2 Thank you, gentlemen.

3 CHAIRMAN BURTON: Would you mind leaving the  
4 letters with us.

5 MR. BENTON: Yes. I have to get the copies --  
6 oh, you want the originals?

7 CHAIRMAN BURTON: No, copies, anything.

8 MR. BENTON: Okay, I think I have the copies  
9 outside. I'll get them and drop them off.

10 CHAIRMAN BURTON: And if you don't, we'll make  
11 copies of them and keep them, because this hearing process isn't  
12 over today.

13 MR. BENTON: Okay, thank you.

14 CHAIRMAN BURTON: Thank you.

15 Sir.

16 MR. ESTRELLA: Good afternoon, ladies and  
17 gentlemen. My name is J. R. Estrella. I'm here as an  
18 individual. I am a commissioner on the California Mexican  
19 American Veterans Memorial, but I'm not representing them. I'm  
20 here as an individual.

21 I am here to give personal testimony against the  
22 confirmation of Mr. Alvarado. My information is based on very  
23 personal contact with Mr. Alvarado.

24 I was not made -- I was not given a copy of his  
25 latest resume. I was able to glance at one a while ago. He  
26 conveniently left out the almost year that he spent on an  
27 outreach project called the South West Republican Project.

28 We had hired him. I was the Executive Director.



1 We had hired him as the outreach worker.

2           At first, I've got to tell you, I was very  
3 impressed, you know, that he was a good man. As time went  
4 along, came to find out different.

5           Among the things that I came to realize,  
6 because -- this is not hearsay, ladies and gentlemen, this is  
7 first-hand experience -- I traveled with Mr. Alvarado. We  
8 stayed in the same hotel rooms. So, I bring to you first-hand  
9 knowledge.

10           He has a definite sobriety problem. The reports  
11 that I would get back from the field were that not only was he  
12 rude and abusive, very condescending.

13           When approached about it, of course, he would  
14 deny it.

15           There's a common thread that weaves through  
16 everything you've heard to date, ladies and gentlemen. And what  
17 I am saying to you is basically to reinforce that.

18           Everybody has talked here about intimidation,  
19 attempts to intimidate. I've also been a victim of that.

20           I wrote a letter, because it was Senator John  
21 Polanco, who was kind enough to nominate me to the Commission.  
22 When I found out that Mr. Alvarado was being considered for this  
23 position, I wrote a letter to him. My letter went to Senator  
24 Polanco on June 3rd. On June 18th, I got a letter on Department  
25 of Veterans Affairs letterhead, addressed to me, basically  
26 accusing me of overstepping my boundary as a commissioner,  
27 citing a couple of military codes that I had violated.

28           Well, I've got to tell you, I was very worried



1 about that. So, I went to my attorney. I made some phone calls  
2 up here with the rest of the committee I was working with. Come  
3 to find out that it was a deliberate attempt to mislead me,  
4 because what they were really talking about was the neutrality  
5 of the design of the memorial.

6 Since then, I've been subjected to harassment.  
7 My patriotism has been questioned. My loyalty to the Mexican  
8 Americans has been questioned. You know, weird phone calls, on  
9 and on and on.

10 But again, you know, the truth is always the  
11 best. And I'm willing to stand up for what I believe in, and I  
12 do not believe that Mr. Alvarado possesses the integrity nor the  
13 ability to manage such an important job.

14 Thank you very much.

15 CHAIRMAN BURTON: Thank you, sir.

16 MR. VARGAS: Mr. Chairman, Senators, I'll be very  
17 brief, two minutes.

18 On Saturday, I had decided not to come over here  
19 and say anything, because --

20 CHAIRMAN BURTON: Your name, sir?

21 MR. VARGAS: I'm Selso Vargas. I'll go further.  
22 I'm 25 years with state government, a veteran of Vietnam, and  
23 I've known Tom since 1986. We worked together. I used to be  
24 the Deputy Director of Communications for Governor George  
25 Deukmejian way back when I got to know -- not Communications,  
26 Community Relations, excuse me.

27 On Saturday, I got a call from one of the two  
28 ladies that gave you those letters of harassment. And she

1 implored upon me to come over here and that's why I'm here in  
2 part, is to underscore what she had to say. I can't give out  
3 her name, but she's one of those two.

4 I can tell you later, if you wish.

5 There's a letter here that also got me here, and  
6 that is one that he wrote to Assemblyman --

7 SENATOR HUGHES: Mr. Chairman.

8 CHAIRMAN BURTON: Senator Hughes.

9 SENATOR HUGHES: Mr. Chairman, I'm going to make  
10 an unusual request, and that request is, since the parents of  
11 this little girl, Mr. Alvarado's daughter, have not excluded her  
12 from this hearing, I would like to ask, as a mother and a  
13 grandmother, that your daughter be excluded from hearing any  
14 further testimony, because this is getting to be too  
15 embarrassing to me, as a mother and a grandmother, to have your  
16 daughter sitting here, Mr. Alvarado.

17 I would like to appeal to you and the mother, and  
18 mother has heard my plea. Thank you very much. You're married  
19 to -- well, if that's not the mother, whoever that nice lady  
20 was --

21 MR. ALVARADO: That's the mother.

22 SENATOR HUGHES: That's fine. I thought it was.

23 I think it's very nice to exclude the child  
24 because this is your child, and I don't think she should be  
25 subjected to what we might hear.

26 Thank you, sir. That shows very good judgment on  
27 your part.

28 Now you can say anything you want.

1 MR. VARGAS: One last thing, there is a letter  
2 here from Tom Alvarado to Assemblyman Lou Correa where he takes  
3 credit for a lot of work that wasn't done on his part, and that  
4 deals with the California Mexican American Veterans Memorial.

5 Between '92 and '94, I was the President and  
6 Chairman of that committee. In his letter to the Assemblyman,  
7 he takes credit for helping on the legislation, develop it, and  
8 implement it. That was AB 1350, that established the  
9 Commission. That's one item. He had nothing to do with it  
10 whatsoever.

11 About giving us office space in the Department of  
12 Veterans Affairs, he claims that it was through his doing and  
13 urging that that occurred. That was not the case. I have a  
14 letter from Senator Polanco to then-Admiral Hacker, that ran  
15 that Department, imploring him to make that available, and  
16 that's how that happened.

17 Throughout the two-and-a-half, three years that I  
18 was Chairman of that committee, Tom never attended one meeting.  
19 He told me personally that he didn't want anybody on our  
20 committee to be considered for the Commission, even though we  
21 brought up the legislation.

22 And I guess I'm here to tell you, as recent as  
23 April 28th, which is when this letter was written, the man is  
24 telling you things that are not true. That went to the Latino  
25 Caucus. It went to Lou Correa in particular, the Assemblyman.  
26 I don't know if you folks have gotten a copy of that. I have it  
27 here.

28 And it bothers me that we're considering, or



1 you're considering, the possible appointment of somebody that  
2 can be so flagrantly out there with the truth or nontruth.

3 That's all I have to say.

4 CHAIRMAN BURTON: Thank you.

5 Mr. Alvarado, I want to ask a couple questions,  
6 then you can respond. Then we'll recess the hearing at the call  
7 of the Chair, because the Members have informed me they have  
8 some questions they need answered within themselves before they  
9 decide to vote on this.

10 But going down the list of the people that were  
11 restricted: Navarro, Gandara, Hardwick, Hardwick, Holland,  
12 Hall, Vu, all of which had home restriction, whatever that is,  
13 in excess of 15 days, where the Code only says 15 days. It does  
14 not provide for an add-on. That's not allowed by law.

15 MR. ALVARADO: It's like house arrest, it seems  
16 to me.

17 CHAIRMAN BURTON: Pardon me?

18 MR. ALVARADO: It sounds like house arrest.

19 CHAIRMAN BURTON: You were the one that was doing  
20 it.

21 MR. ALVARADO: No, sir. I was not doing it.

22 CHAIRMAN BURTON: Who was doing it? The person  
23 under you was doing it, Mr. Davis.

24 MR. ALVARADO: No.

25 CHAIRMAN BURTON: Who was doing it?

26 MR. ALVARADO: Well, sir, I knew of the actions  
27 that were taken of these two individuals here. The other ones,  
28 I don't know who they are. I have no idea who they are.



1 CHAIRMAN BURTON: Who could take that action if  
2 it's not you or Mr. Davis?

3 MR. ALVARADO: No, it's the administrator at the  
4 veterans home.

5 CHAIRMAN BURTON: And they're allowed to do stuff  
6 that's not authorized by law?

7 MR. ALVARADO: No, sir, they're not supposed to.

8 CHAIRMAN BURTON: Well, they do it.

9 MR. ALVARADO: That sounds to me like they are,  
10 and I'll address it with them directly.

11 CHAIRMAN BURTON: Well, you've got three of the  
12 people. You have people who resigned, people terminated, people  
13 out on comp, which could well be a stress thing, four resigned.

14 I mean, it kind of gets into management.

15 Joy Hempstead, who is she?

16 MR. ALVARADO: She's my personnel officer.

17 CHAIRMAN BURTON: So, does she work under you?

18 MR. ALVARADO: That's correct, sir.

19 CHAIRMAN BURTON: Who's Bob Gray?

20 MR. ALVARADO: Bob Gray is a former administrator  
21 who worked at the home in 1999 for a couple of years. He was  
22 hired back in '98, I believe.

23 He was -- it was under his administration a lot  
24 of these took place, with the exception of Miss Hall.

25 CHAIRMAN BURTON: I'm sorry, it was what?

26 MR. ALVARADO: It was under his administration,  
27 his tenure, that all these personnel matters took place.

28 CHAIRMAN BURTON: But it's his tenure, your

1 tenure. You were there, too.

2 MR. ALVARADO: I got there, of course, '99, and  
3 these activities took place before the '99 period.

4 CHAIRMAN BURTON: How about October 8th, '99?

5 MR. ALVARADO: Who was that?

6 CHAIRMAN BURTON: Gandara.

7 MR. ALVARADO: Gandara? I believe his has been  
8 ongoing for a number of years. I'd have to check with the  
9 personnel officer. October wasn't the first time he's had  
10 personnel action involved. I'd have to go back and check with  
11 my personnel officer.

12 But it did not start October, '99.

13 CHAIRMAN BURTON: It says Robert Gray was there  
14 December 27th, 1999. You were there then, right?

15 MR. ALVARADO: Yes, sir. I relieved him when we  
16 had some problems with the Department of Health Services survey.

17 CHAIRMAN BURTON: Why don't you respond, then  
18 there may or may not be questions of the Committee.

19 SENATOR HUGHES: I have one, please.

20 I read the Sacramento Bee like everyone else does  
21 here in Sacramento. It was reported by the Sacramento Bee that  
22 you were to be terminated, and you resigned from the Department  
23 before you were terminated in fact. And that had to do with the  
24 Cal-Vet home loan program.

25 Is that true, or is it just gossip, or is the  
26 Sacramento Bee incorrect?

27 MR. ALVARADO: The Sacramento Bee's incorrect,  
28 Senator. I made a decision to return home because my daughter

1 was, at that time, she was a four-year -- she literally grew up  
2 without me when she was born.

3 I talked to the then Chief of Staff, Bob White,  
4 about three weeks ago, and asked him if he had any knowledge of  
5 a tentative or upcoming term inaction. He said he didn't.

6 It was my decision solely. I had enough of  
7 commuting back and forth every weekend. And when I got home on  
8 weekends, I'd be on the road. And it was having a terrible  
9 strain on my family, so I just --

10 SENATOR HUGHES: I thank you very much for  
11 allowing your wife to take your daughter out, because I think  
12 it's terrible to see an inquisition like this about your parent,  
13 whom I assume you adore, like all children do.

14 CHAIRMAN BURTON: May I say something, please,  
15 Senator?

16 SENATOR HUGHES: Yes.

17 CHAIRMAN BURTON: We're informed that when  
18 Mr. Gray put these people on suspension, you were the Secretary.  
19 And Mr. Gray has said that many of these were, I guess, done on  
20 your instructions. He made the calls on your instructions.

21 MR. ALVARADO: That's not correct, sir. That's  
22 not correct.

23 CHAIRMAN BURTON: So, either he's not being  
24 accurate in his remembrances, or you're not?

25 MR. ALVARADO: I think I'm a pretty good act of  
26 memory, and that is not correct, sir. That is not correct.

27 CHAIRMAN BURTON: Well, that's what our  
28 investigations have found.



1 Senator Hughes.

2 SENATOR HUGHES: Have you ever been accused of  
3 sexual harassment against a female employee, or by any other  
4 employee?

5 MR. ALVARADO: No, ma'am.

6 SENATOR HUGHES: So, someone just manufactured  
7 this from out of the blue?

8 MR. ALVARADO: Well, I have never been accused of  
9 any sexual harassment in my entire 30-some-odd years of working  
10 in a professional capacity.

11 SENATOR HUGHES: What is the requirement for the  
12 amount of sexual harassment sensitivity training that people in  
13 your agency are required to take?

14 MR. ALVARADO: Last -- when I was first  
15 confronted with these letters --

16 SENATOR HUGHES: No, I want you to answer the  
17 question that I asked you, then you can add the addendum to it  
18 afterwards.

19 MR. ALVARADO: Well, we --

20 SENATOR HUGHES: Do you know the rules and the  
21 regulations? You're the head of the Department, so I'm asking  
22 you.

23 What is the requirement for the amount of sexual  
24 harassment training you are required to take at your level, and  
25 then the sexual harassment training that anyone beneath you is  
26 required to take?

27 MR. ALVARADO: At my level, we had a six-hour  
28 training on sexual harassment civility training last October at



1 the -- with all the executive staff and the principal managers  
2 within the division, as well as veterans homes.

3 SENATOR HUGHES: So, all of the employees have to  
4 take the same amount of sexual harassment training?

5 MR. ALVARADO: In this case, we didn't require  
6 that, Senator. We just did the executive and senior managers.

7 SENATOR HUGHES: But you did take it?

8 MR. ALVARADO: Absolutely, yes, ma'am. I was the  
9 one that suggested it.

10 SENATOR HUGHES: And those people directly below  
11 you took it?

12 MR. ALVARADO: That's correct.

13 SENATOR HUGHES: How long ago was that?

14 MR. ALVARADO: This past October, I believe it  
15 was.

16 SENATOR HUGHES: And then prior to that time when  
17 you were employed, how many times did you take it?

18 MR. ALVARADO: I don't recall ever taking this  
19 kind of sexual harassment training. It was never --

20 SENATOR HUGHES: So, it was your idea?

21 MR. ALVARADO: Yes, ma'am.

22 SENATOR HUGHES: That you took the sexual  
23 harassment training?

24 MR. ALVARADO: Yes, ma'am. We did it statewide.

25 SENATOR HUGHES: So, you were sensitive to this,  
26 and you would never make the mistake of sexually harassing  
27 anyone or leading them to believe that they were sexually  
28 harassed?

1 MR. ALVARADO: Absolutely not. I wouldn't do  
2 that. I never have, and I can't condone it.

3 If I may, Senator --

4 SENATOR HUGHES: Did you promote an attorney to  
5 the position of Chief Counsel when or while an individual was  
6 accused of sexual harassment?

7 MR. ALVARADO: Yes, ma'am. That case was already  
8 in the process. This was last May, I believe it was. And he  
9 was, I guess, acquitted of the charges in the court.

10 SENATOR HUGHES: But you did promote him while  
11 that was going on; is that correct?

12 MR. ALVARADO: Yes, in the final stages of the  
13 litigation, yes.

14 SENATOR HUGHES: Thank you.

15 MR. ALVARADO: You're welcome.

16 SENATOR LEWIS: I had a question, looking at all  
17 this paperwork. There's a letter signed by Robert Gray to  
18 Mr. Gandara, referencing his being put on paid administrative  
19 leave. It's dated October 8th, 1999.

20 Did I hear you say that you relieved Mr. Gray  
21 from his post?

22 MR. ALVARADO: Yes, Senator, I did, once the  
23 final results of the second survey that was conducted by the  
24 Department of Health Services.

25 I was led to believe by Mr. Gray that we had no  
26 problems at Barstow with respect to the survey.

27 SENATOR LEWIS: What was the date that you  
28 relieved him of his duties?

1 MR. ALVARADO: I believe it was November. I'm  
2 pretty sure it was November. I'm not quite sure exactly, but I  
3 think it was November, on or about, but I'm not sure. I think  
4 it was November.

5 CHAIRMAN BURTON: Is that accurate information?  
6 Shall we say that there was a release or a statement by the  
7 Department of Health Services that somebody died at Barstow? I  
8 guess the statement came out today, and they're looking into it.  
9 Do we know anything about that?

10 MR. ALVARADO: I believe the individual was back  
11 on February 11th. What we were led to understand is that he  
12 died of a coronary, of a heart attack.

13 CHAIRMAN BURTON: Somebody died, and they're  
14 looking into it. Somebody just died, and they're looking into  
15 it.

16 MR. ALVARADO: On February 11th?

17 CHAIRMAN BURTON: No, I think today.

18 MR. ALVARADO: No, no, no. That was February  
19 11th.

20 CHAIRMAN BURTON: Why would they put out a  
21 statement today about February 11th?

22 MR. ALVARADO: I just talked to Dr. Bunta a  
23 little while ago, and I didn't think she mentioned any -- made  
24 any reference about dying today.

25 CHAIRMAN BURTON: That's a break.

26 SENATOR HUGHES: I don't want to beat a dead  
27 horse, but you gave me fairly good answers to the other  
28 questions that I asked you about the sexual harassment



1   allegations.

2                   And the Concerned Veterans sent you a letter to  
3   clarify if three -- not one -- but three female employees had  
4   filed sexual harassment complaints against you during the Wilson  
5   administration. And you had refused to answer the letter, but  
6   you answered my questions directly. I appreciated that.

7                   Why did you refuse to answer the letter?

8                   MR. ALVARADO: I believe we did, because we  
9   referenced them to -- I forgot what the nature of the response  
10  was, but I recall that letter, and we did respond to it.

11                  SENATOR HUGHES: Do you have a copy?

12                  MR. ALVARADO: No ma'am, I don't. But I can get  
13  it faxed to you.

14                  SENATOR HUGHES: You will find or make up one;  
15  right?

16                  MR. ALVARADO: No, ma'am. There is a letter,  
17  because I recall when we got the letter --

18                  SENATOR HUGHES: I'm not being sarcastic. I'm  
19  being very emphatic about that because they're talking about  
20  your reputation, and if you don't protect your reputation, how  
21  do you expect anybody else to believe that you have a good  
22  reputation?

23                  I think it's very, very important that, if you  
24  have some allegations like this, that you would want to have it  
25  on file; right?

26                  MR. ALVARADO: Yes, ma'am.

27                  Senator, if I may, over the past 15 years, there  
28  have been three allegations of sexual harassment in the Farm and



1 Home Division. And all three of those individuals were fired.

2 SENATOR HUGHES: No, all three of those  
3 allegations were against you, sir.

4 MR. ALVARADO: That I've seen.

5 CHAIRMAN BURTON: Sir, we're not talking about  
6 allegations against other people.

7 MR. ALVARADO: What I was getting to is, there  
8 haven't been any charges or complaints about my behavior.

9 SENATOR HUGHES: But these three letters were  
10 about other people that worked for you?

11 MR. ALVARADO: Senator, I don't know who those  
12 people were. It doesn't matter. I didn't do -- I wasn't -- I  
13 didn't condone, or I don't condone that kind of activity, and I  
14 don't practice it.

15 SENATOR HUGHES: But the answer is, no, the three  
16 letters were not about you regarding sexual harassment? Is that  
17 right?

18 MR. ALVARADO: Well, that would be my answer,  
19 ma'am.

20 SENATOR HUGHES: No, not would be. This is not  
21 the Millionaire Game, where you've got to guess the right  
22 answer.

23 I want the truth from you, sir.

24 MR. ALVARADO: I am giving you truth, Senator. I  
25 am giving you the truth.

26 I would not subject anyone to this kind of  
27 embarrassing situation if I didn't explain or express my truth  
28 to you.

1           SENATOR HUGHES: But the truth is that those  
2 complaints were not against you, yes or no? Yes or no?

3           MR. ALVARADO: No.

4           SENATOR HUGHES: Well, I don't read sign  
5 language. Okay, no.

6           Thank you.

7           CHAIRMAN BURTON: All right, the Committee will  
8 be in recess upon the call of the Chair. We will be back in  
9 touch with you. Members have shown the desire not to vote  
10 today, but to look at some of the information that's been  
11 provided us, give them a chance to discuss it.

12           So, we are quite aware of the deadline date.  
13 Unfortunately, your hearing was put over a week at the  
14 Governor's request, which kind of cost you some time and puts us  
15 in a shorter timeline than the Committee likes to deal with, but  
16 we will do that.

17           If there's nothing more to come before the  
18 Committee.

19  
20           [Thereupon this portion of the  
21 Senate Rules Committee hearing was  
22 terminated at approximately 5:25 P.M.]

23           --ooOoo--  
24  
25  
26  
27  
28

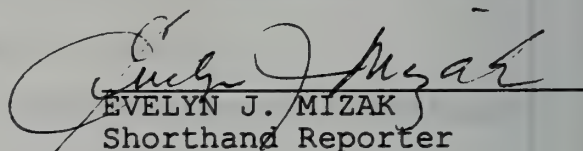
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

<sup>#</sup>  
11 day of May, 2000.

  
EVELYN J. MIZAK  
Shorthand Reporter







## TESTIMONY BEFORE THE SENATE RULES COMMITTEE

May 8, 2000

My name is Samuel S. Ortega, and I am a resident of Sacramento.

### Background

- Retired State Employee - 30 years of State Service
- Life Member of the Veterans of Foreign Wars - Post 85
- Board Member, Latino Senior Citizens in Action
- Board Member, CAMAVM Inc.

Thank you for the opportunity to speak.

### Opposition

I am opposed to the confirmation of Mr. Alvarado because he does not possess the personal integrity to lead the Department, and he does not have the ability to perform the day to day responsibilities without controversy and without making administrative blunders.

My comments will be in three (3) areas:

- A. Willful violation of the Government Code to intimidate State Employees
- B. Overt and persistent Retaliatory Conduct against State Employees
- C. Sexual Harassment conduct against female employees at the Department of Veterans Affairs.

### Professional Background

- Assistant Chief, Appeals Division, State Personnel Board

For (4) years, I served as the Assistant Chief of the Appeals Division. In this capacity I investigated hundreds of complaints regarding discrimination, sexual harassment, retaliation, and misconduct on the part of State employees, including high level administrators.

- APA and Associates

I am the Owner and Principal Consultant of APA and Associates. In this position I am retained by clients to represent them in a hearing before the State Personnel Board, or before an Administrative Law Judge.

A. ABUSE OF POWER AND WILLFUL VIOLATION OF THE  
GOVERNMENT CODE SECTION 19592.2

I. Reference

- Personnel actions taken against State employees at Barstow.
- Over the past 18 months, ten (10) employees have been restricted to their home in violation of the Government Code Section 19592.2.

II. Employees Affected

HAND OUT - LIST OF EMPLOYEES

III. Requirements of the Government Code

- Government Code Section 19592.2, states, "**Pending Investigation** by the appointing power of accusations against an employee involving any of the causes for discipline specified in Section 19572, the appointing power may order the employee on leave of absence **not to exceed 15 days**. The leave may be terminated by the appointing power by giving 48 hours notice in writing to the employee."

HAND OUT - GOVERNMENT CODE SECTION

IV. Example of abuse and violation of the G C

- In the case of Mr. Fernando Gandara, he was restricted to his home on two separate occasions:
  - March 26, 1999 for 30 days - HANDOUT
  - October 8, 1999 - HANDOUT

V. There are no provisions to exceed 15 days

VI. G C is there to ensure that State employees have certain rights, and to ensure that there is not abuse of power.

- Progressive Supervision - ABC - Not A to Z

**VII. What is the Intent**

- Intimidate
- Harass
- Coerce into submission
- Results are Demotion, Resignation, or Transfer

**VIII. Evidence of Intent**

- No investigations ever conduct
- F. Gandara letter - No Investigation                      HANDOUT
- Denise Hall letter - No Investigation                      HANDOUT
- E-Mail by Bob Gray - Alvarado Mandated                      HANDOUT

**IX. Impact**

- Dignity
- Self Respect
- Suppression
- Career Opportunities

**X. The Department has no discretion to amend the G C**

- The Legislature makes the laws

**XI. Conclusion**

- Violation of the G C
- Abuse of power
- Abuse of State employees



**B. RETALIATION AGAINST STATE EMPLOYEES  
AND VETERANS VOLUNTEERS**

**I. Employees affected**

- A. Denise Hall - Public Affairs Officer**
- B. Fernando Gandara - Business Services Assistant**
- C. Arthur Benton - Volunteer for Veterans**

**A. Denise Hall**

- on January 24, 2000, Mr. Alvarado called Denise at her job.
- On January 26, restricted to her home per G C 19592.2
- On February 9, time is extended.
- On February 14 returned to work
- Job Duties changed and personal item removed.
- On February 11, Tammie Scholl call to Mr. Alvarado

**B. Fernando Gandara**

- Filed a D/C against the Department.
- SPB Hearing February 15.
- On February 9, Mr. Alvarado singles out Mr. Gandara.
- Subpoena to testify May 10, 2000 before the SPB.
- E-Mail from Bob Gray

**C. Arthur Benton**

- On or about January 2000 Mr. Benton wrote a letter to Gov. Davis
- Complaint regarding patient treatment, low moral, abuse of employees, and waste taxpayers money/.
- Mr. Alvarado telephoned Mr. Benton and told him he had no business writing to the Governor.
- The letter was written to the Governor

## II. Government Code - Discrimination and Retaliation.

Government Code Section 19702 (a) states: " - A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person **shall not be retaliated** against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, **"discrimination" includes harassment**, this subdivision is declaratory of existing law."

## III. Personnel Board Hearings

- Charges of RETALIATION are before the State Personnel Board
- Mr. Alvarado will be subpoenaed to appear and explain his retaliatory conduct.
- The Administrative Law Judge will find that retaliation did take place and Mr. Alvarado will be served with an adverse action.

## IV. Mr. Alvarado is not above the law

- V. Mr. Alvarado should not receive immunity just because he is an appointee of the Governor.

## C. COMPLAINTS OF SEXUAL HARASSMENT

### I. Sexual Harassment

- Complaints by several female employees

### II. Confusion or misunderstanding

- Complaints can be formal or informal.
- Informal can be verbal, or as simple as a written note.

### III. If you make a Formal Complaint

- it eventually you have to testify on a host of personal matters.
- The investigation becomes a public document.
- Most females are reluctant to file a formal complaint.
- However, most are willing to make a verbal complaints.

### IV. Two letters of Complaint exist

- They constitute an informal complaint.
- They have come forward now, because Mr. Alvarado is seeking a higher level position in the same Department in which he is accused of Sexual Harassment.
- If the two complaints are not investigated, Mr. Alvarado now has more power to abuse women.
- This sends the wrong message.

### V. Duty bound to get the facts

- The complaints are informal, thus they are confidential.
- SRC members are free to conduct a confidential interview of the complainants.
- Someone is lying, either the two females who have complained, or Mr. Alvarado.

### VI. It would be unconscionable to confirm Mr. Alvarado

# NUMBER OF PERSONS RESTRICTED TO THEIR HOME PENDING AN INVESTIGATION.

Name	Job	Days	Extended	Results
A. Navarro	Doctor	51	yes	Resigned
L. Fairbanks	Nurse	5		Resigned
F. Gandara	Business Ass't	30	yes	Returned
F. Gandara*	Business Ass't	10		Returned
R. Allen	Dietetics	10		Returned
I. Hardwick	Nurse	60	yes	Terminated
I. Hardwick*	Nurse	30	yes	Reinstated
K. Holland	Nurse	30	yes	Resigned
D. Hall	Public Affairs	20	yes	Returned
L. Vu	Doctor	30	yes	At Home
D. Place	Compliance	14		on Work Comp
R. De La Riva	Procurement	14		Resigned
R. Gray **	Administrator			

\* Restricted to their home twice.

\*\* Threatened with termination, forced to resign



## SENATE RULES COMMITTEE HEARING

#2

PART 2. STATE CIVIL SERVICE  
 Chapter 7. Separation from Service  
 Article 1. Disciplinary Proceedings

Government Code Section - 19571 - In conformity with this article and the board rule, adverse action may be taken against any employee, or person whose name appears on any employment list for any cause for discipline specified in this article."

Government Code Section 19572 - "Each of the following constitutes cause for discipline of an employee, or person whose name appears on any employment list:"

- (a) - Fraud in securing employment
- (b) - Incompetence
- (c) - Inefficiency
- (d) - Inexcusable neglect of duty
- (e) - Insubordination
- (f) - Dishonesty
- (g) - Drunkenness on duty
- (h) - Intemperance
- (i) - Addiction to the use of controlled substance
- (j) - Inexcusable absence without leave
- (k) - Conviction of felony .....
- (l) - Immorality
- (m) - Discourteous treatment of the public or other employee
- (n) - Improper political activity
- (o) - Willful disobedience
- (p) - Misuse of state property
- (q) - Violation of this part or board rule
- (r) - Violation of the prohibitions set forth in accordance with Section 19990 (-----)
- (s) - Refusal to take .....
- (t) - Other failure of good behavior either during or outside duty hours ....
- (u) - Any negligence .... patient of a state hospital
- (v) - The use of .... target practice ....
- (w) - Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, marital status, sex, or age, against the public or other employee while acting in the capacity of a state employee.

Government Code Section 19592.2 - **Pending Investigation** by the appointing power of accusations against an employee involving any of the causes for discipline specified in Section 19572, the appointing power may order the employee on leave of absence **not to exceed 15 days**. The leave may be terminated by the appointing power by giving 48 hours notice in writing to the employee.

## DEPARTMENT OF VETERANS AFFAIRS

Veterans Home of California - Barstow

100 E. Veterans Parkway

Barstow, CA 92311

(760) 252-6200



March 26, 1999

Fernando Gandara  
6105 Honeysuckle Lane  
San Bernardino, CA 92407

Dear Mr. Gandera:

Under Section 19592.2 of the Government Code, you are hereby ordered on paid Administrative Leave pending inquiry of allegations of unprofessional conduct at the Veterans Home of California - Barstow. This Administrative Leave will be for a maximum of Thirty (30) days beginning with Friday 26, 1999 and ending at close of business S Friday April 23, 1999.

You are to keep yourself available for communication by telephone between the hours of 8:00am And 5:00pm. If we need to contact you, we will contact you at (909) 880-1708.

You are also notified that you are not permitted to be on the Home grounds during the above 30 day period, unless instructed to do so.

If you have any questions or wish further information, please contact me at (916) 653-2535.

Sincerely,

Joy Hempstead, Chief  
Personnel Management Division

- 28 -

PUTTING VETERANS FIRST

CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS  
VETERANS HOME OF CALIFORNIA - BARSTOW  
100 E. VETERANS PARKWAY  
BARSTOW, CALIFORNIA 92311  
(760) 252-6200



October 8, 1999

Fernando V. Gandara  
Procurement Services  
Veterans Home of California-Barstow

Dear Mr. Gandara:

Under Section 19592.2 of the Government Code, you are hereby ordered on paid administrative leave pending evaluation of your performance of duties as Business Services Assistant at the Veterans Home of California-Barstow. This administrative leave will be for a maximum of five days beginning on October 8, 1999.

You are not to return to the Home grounds before October 15, 1999, but are to keep yourself available for communication by the telephone from the Home, Monday through Friday between the hours of 8:00 a.m. to 5:00 p.m.

Please be advised that prior to returning to duty on October 15, 1999, you are to contact Mr. William Rigole, Deputy Administrator, at (760) 252-6255 for further instructions.

You are also notified that you are not permitted to be on the Home grounds during this five-day period. This leave may be terminated by the appointing power by giving notice to the employee.

Sincerely,

ROBERT GRAY  
Administrator

cc: Personnel Officer  
OPF



#5

STATE OF CALIFORNIA

GRAY DAVIS, Governor

DEPARTMENT OF VETERANS AFFAIRS  
VETERANS HOME OF CALIFORNIA-BARSTOW  
100 E. VETERANS PARKWAY  
BARSTOW, CALIFORNIA 92311  
(760) 252-6200



April 14, 2000

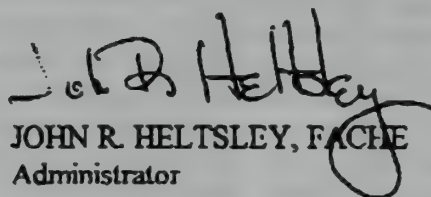
Mr. Fernando Gandara  
6105 Honeysuckle Lane  
San Bernardino, California 92407

Dear Mr. Gandara:

This letter is in response to your letter of April 11, 2000, requesting a copy of a report of the investigation of "allegations of unprofessional conduct" on your part.

You were placed on paid administrative leave on March 26, 1999, for a period of 30-days. Your official personnel file (OPF) contains all pertinent information relevant to any actions concerning your employment at the Veterans Home of California-Barstow, and you are entitled to review your file at any time by contacting the Personnel Office.

Sincerely,

  
JOHN R. HELTSLEY, FACHE  
Administrator



#6

Letter from Bob Gray, former Administrator at Barstow stating that Mr. Alvarado directed that he be placed on forced administrative leave.

December 27, 1999

Dr. Alfonso Navarro:

I am sorry to hear that you are still on paid administrative leave from the Veterans Home-Barstow. I want you to know that it was not my decision to place you on administrative leave. That was a directive that was given to me by Secretary Tomas Alvarado. If you remember, I was given the directive to place you on administrative leave after the newspaper article in October came out about the Health Inspection. Although I disagreed with the decision, I had no choice about the action for I was threatened to be terminated myself.

While I was the administrator at the Veterans Home-Barstow, I constantly sought your advice because of your knowledge and experience. In no way, do I feel that you were responsible for the poor health inspection. In fact, I know that you were very thorough with your job performance. You did monthly reviews with the other physicians and the contracted physicians at the facility. I know that you did audits of their performance and of their documentation. You did 100% death review audits. If there was any concern regarding a physician and what he did, I know that you would hire an outside physician to investigate the incident and to give you an objective opinion. You never had any problem filling in for any physician if someone called in sick. You saved the State money by close observation of the residents when they were at the hospital and you always audited the invoices of our contracts which saved the State considerable amount of money. I always felt that you performed above and beyond my expectations of a Chief Medical Officer and I can't understand why they decided to place you on administrative leave. I had communicated to Tomas Alvarado and to Jerry Rucker, Undersecretary of Veterans Affairs, of your intentions to retire in January 2000. With this knowledge, I can't understand the actions that they have taken against you these past months. I wish you the best in the future and if I could be of any assistance, please feel free to contact me.



Robert Gray, Administrator

#7  
E-Mail from Bob Gray to Fernando Gandara stating that Mr. Gandara will not be placed in a permanent position at the Veterans Home at Barstow per the instructions of Mr. Alvarado.

Subj: (2/15/00 10:57:09 AM #First Boot!!!  
From: Robert\_16150@email.msn.com (Robert Gray)  
To: MajGandaraJr@cs.com

Fernando, you have asked me several times why you were never transferred to a full time slot within your department. You had asked me why you always stayed in the blanket. It didn't make sense to you that I can only answer the question that a full time slot offered but you were never transferred out of the blanket. I can only answer the question and that is when I was the Administrator of the Veterans Home in Barstow, I signed off on an M80 form that you be transferred out of the blanket and into a full time slot within the department that you were working when you were transferred out of the blanket. However, the M80 form also needs the signature of the Secretary of Veterans Affairs, Tomas Alvarado, to sign it at that time and so the transfer never occurred. I hope this answers your question and concerns about Robert Gray.



## CAL-VET FARM AND HOME LOAN PROGRAM INVESTIGATIVE COMMITTEE

Senate Rules Committee Confirmation Hearing of Tomas Alverado

**RE: Tomas Alverado's complicity or incompetence, false statement, and malfeasance in office, relative to the diversion of hundreds of millions of dollars in "1943 Fund" or Cal-Vet Home Loan Bond "and" program monies.**

Tomas Alverado had a knowledge of, and has acted with malfeasance in office, and has helped to conceal, and made false statements regarding the fact that there have been massive fraudulent "diversions of hundreds of millions of dollars [perhaps billions] from the Cal-Vet Federal Tax Exempt Bond Sale generated money and from Cal-Vet program money dating from at least 1981/82 through 1996.

Tomas Alverado was first made aware of the fact of the diversion of Cal-Vet Bond Funds, and given the supporting documentation by myself, in the fall of 1997. Tomas Alverado was working on then candidate Gray Davis's Campaign Committee for Governor. Several days after receiving the documentation Mr. Alverado informed me that because the information could be embarrassing to both himself and Gray Davis, it would not be used in the campaign. Tomas Alverado was further advised of these diversion of Cal-Vet funds in letters he received addressed to James Ramos, Former Secretary in the spring of 1998 and to Governor Gray Davis in the fall of 1999.

As recent as March 16, 2000, Tomas Alverado in a letter addressed to John Cantfield, the Assistant Legislative Officer for the "Veterans Affiliated Council" of Sacramento, did make the following blatant **"false statement"** as it regards the illegal "diversion of billions" of dollars of Cal-Vet Bond Funds:

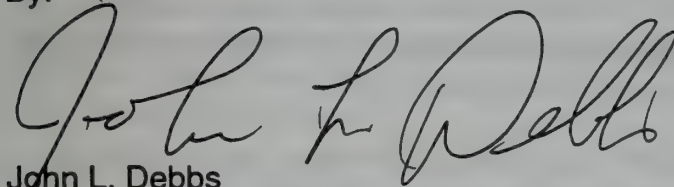
**"...your group should rest comfortably with the knowledge that the department's [DVA] operations are...sound and without any hint of improper activity"**

Nothing could be further from the truth. The facts are the following:

- A. From at least 1981/82 fiscal year through 1996/98 \$5.6 billion in Cal-Vet G.O. and Revenue Bond money was raised from the sale of Cal-Vet Bonds to allegedly fund 75,274 new or post 1980 Cal-Vet home loans. The DVA's own financial data makes it a virtual **"mathematical impossibility"** that these loans could have been made, and that \$5.6 billion was spent to fund these **phantom Cal-Vet loans**.
- B. Roughly \$1.375 billion of this Cal-Vet Bond Fund money appears to have been fraudulently diverted between 1990 and 1994, i.e., when Thomas Alverado was the DVA's Deputy Director, under Jay Vargas and Pete Wilson's administration and he had direct administrative authority over the operation of the Division of Farm and Home Loans.

- C. Roughly \$7 billion in "1943 Fund" or Cal-Vet Program [principle and interest payments from 115,000 veterans dating back to 1981], was illegally diverted out of the Cal-Vet or "1943 Fund" to help pay the bond debt service cost on billions of dollars that had never been used to finance a single Cal-Vet home loan. Approximately \$3 billion of these Cal-Vet program monies were diverted during Tomas Alverado's tenure as Deputy Director between 1990 and 1994. Tomas Alverado's acts and his statement that the **"program is sound and without any hint of improper activity"** is clearly malfeasance in office.
- D. The fraudulent acts discussed herein have caused California's war veterans to pay hundreds of millions of dollars in overcharged interest, i.e. an 8% one-year variable interest rate instead of the 3% to 4% veterans should have been paying between 1981 and 1998. Much of this overcharged interest was paid between 1990 and 1994 when Tomas Alverado had direct administrative authority over the Division of Farm and Home Loans. *Today, Tomas Alverado wants to be confirmed as Secretary of the State Department of Veterans Affairs. Cal-Vet Contract Holders are asking this committee NOT TO CONFIRM Tomas Alverado as Secretary of the State Department of Veterans Affairs.*

By:



John L. Debbs  
Vice-Chair CVFHLPIC



# VETERANS AFFILIATED COUNCIL<sup>142</sup>

Of Sacramento, California And Vicinity Since 1921.

3416 Braeburn Street  
Sacramento, CA 95821  
March 10, 2000

Secretary Tomas Alvarado  
California Department of Veterans Affairs  
Sacramento, CA 95814

Dear Secretary Alvarado,

On January 12, 2000 The Veterans Affiliated Council of Sacramento and Surrounding Areas (VAC) had Mr. John Debbs as guest speaker. Mr. Debbs represented the Cal-Vet Farm and Home Loan Program Investigative Committee. Mr. Debbs raised a number of allegations concerning actions by CDVA which his group believes have been illegal and fraudulent including diversions of billions of dollars from the Cal-Vet Farm and Home Loan Program.

This is a very complex situation. The VAC does not know whether these allegations are true or not. Before we take any position on this matter, we need answers for these following questions or issues:

1. Were in fact approximately 75,274 "new" post 1980 Cal-Vet home loans entered into between 1981/82 fiscal year and 1986, ie. in addition to the 110,000 Cal-Vet loans existing in 1980?
2. Was approximately \$4.926 billion in Cal-Vet G.O. and Revenue Tax Exempt Bond money in fact used to fund the above 75,274 "new" or post 1980 Cal-Vet home loans, i.e. between 1980 and 1996?
3. Did the number of existing Cal-Vet home loans steadily decline every fiscal year from approximately 112,000 loans in 1982 down to roughly 39,000 in 1996?
4. Was the annual average prepayment experience approximately 5.6% to 6.0% for Cal-Vet loans for the time period between 1981 and 1996?
5. Did the maximum total increase in the actual Cal-Vet real estate owned or receivables under contract of sales ever exceed \$1.035 billion between 1980 and 1996?
6. Are there existing micro-data impound account tax payment records available for each Cal-Vet home loan entered into back to at least 1980? If not, where are these records?

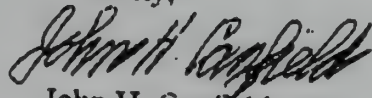
7. Please explain, if true, how in 1990/91 fiscal year there existed an approximate \$1.8 billion difference (more) in "outstanding bonds payable" than in "receivables under contract of sales" or actual Cal-Vet real estate owned?
8. Where was this \$1.8 billion in Cal-Vet bond money used if not in the making of loans to veterans?

According to the speakers at the VAC meeting, these questions are based on financial data taken from CDVA's annual "1943 Fund" Audit reports, and the State Treasurer's Official Statement of Bonds.

Some of our VAC members have, or have had, Cal-Vet loans. They speak highly of their experience with the Cal Vet Farm and Home Loan program. They, and the VAC, are very concerned about the program with the recent changes in the life and disability insurance requirements. Some veterans with Cal-Vet loans are going to lose, or already have lost, their homes unless remedies can be found. Yet, on the other hand, many VAC members find these allegations by Mr. Debbs and his group difficult to believe.

We would appreciate your response to these questions as these allegations against the Cal-Vet Farm and Home Loan program are very serious and need to be answered before the VAC takes any position.

Sincerely,



John H. Canfield  
Assistant Legislative Officer

cc: Governor Gray Davis  
CMDR. - Katherine Robin



DEPARTMENT OF VETERANS AFFAIRS  
OFFICE OF THE SECRETARY  
P.O. BOX 94295  
SACRAMENTO, CALIFORNIA 94295-0001  
Telephone: (916) 653-2158

March 16, 2000

John H. Canfield  
Assistant Legislative Officer  
Veterans Affiliated Council of Sacramento  
3416 Braeburn Street  
Sacramento, CA 95821

Dear Mr. Canfield:

I appreciated your letter expressing interest in the Department's Cal-Vet Farm and Home Loan Program. You write about numerous claims raised by Mr. John Debbs regarding alleged diversions of "billions of dollars" from the Cal-Vet Farm and Home Loan Program. I was pleased to hear that VAC members who have, or have had, Cal-Vet loans speak highly of their experience with the Cal-Vet Farm and Home Loan Program. You stated that "many VAC members find these allegations by Mr. Debbs and his group difficult to believe".

Because Mr. Debbs is the lead plaintiff in a lawsuit against the Department regarding Farm and Home Loan Life and Disability reserves, we believe it inappropriate to comment on Mr. Debbs' allegations. We can, however, communicate to you the state of the public record in that case. The record amply demonstrates the Department's strong denial of any wrongdoing regarding its handling of Cal-Vet Life and Disability Program reserves.

Further, with respect to the allegations of "diversions of billions", your group should take comfort and maintain its confidence in the Cal-Vet Farm and Home Loan Program because of the extent of public scrutiny and ongoing independent audit processes which constantly examine Cal-Vet's operations. The Cal-Vet Program is audited annually by the outside firm of Deloitte & Touche. That audit is part of the annual report from the Department to the Legislature which examines the Department's operations. Further, the Department reports to the Legislature annually on the state of its insurance programs. In addition, the Department of Veterans Affairs' operations are subject to constant internal audit by the Audit Unit of the Department.

In addition, as the need arises, from time to time, the Bureau of State Audits, audits the Department's programs. And if this is not enough, outside bond consultants constantly examine the Department's operations in order to assure full disclosure of the Department's operations and

SERVING VETERANS SINCE 1946

John H. Canfield  
March 16, 2000  
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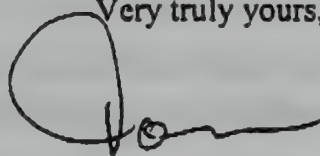
programs to purchasers of bonds which are used to fund Departmental programs.

Finally, pursuant to new State law, which went into effect on January 1, 2000, the Department's operations are now subject to examination by the new Inspector General for the Department of Veterans Affairs. The Inspector General reports to the Governor.

Your group should rest comfortably with the knowledge that the Department's operations are constantly subjected to examination to assure that its programs are sound and without any hint of improper activity. Undoubtedly because of that examination process, the bond rating for Cal-Vet Bonds has been equal to or higher than that of general State of California Bonds.

Please feel free to let me know if you have any further questions about the Department's operations.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tomas Alvarado', with a large, stylized initial 'T'.

Tomas Alvarado  
Secretary



April 27, 2000

The Cal-Vet Farm and Home Loan Program  
Investigative Committee  
c/o John L. Debbs  
7589 Eddy Lee Way  
Sacramento, CA 95822

Re: The Cal-Vet Farm and Home Loan Program

Dear Mr. Debbs:

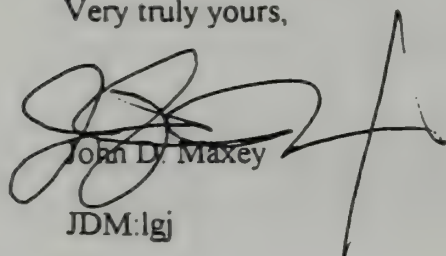
This letter will verify that I have been retained as a Certified Public Accountant and as an expert witness to perform an investigation and analysis into the Cal-Vet Farm and Home Loan Program.

I have been retained by the Cal-Vet Farm and Home Loan Program Investigative Committee. My investigation and analysis is not complete at this time. There does appear to be substantial discrepancies between the amount of funds owed by the Cal-Vet Farm and Home Loan Program and the amount of receivables under contract of sales or actual real estate owned by the Cal-Vet Farm and Home Loan Program.

There appears to be a significant discrepancy between the number of loans reported to have been entered into between 1980 and 1995 and the number of loans outstanding as of 1995. The reported pre-payment percentages do not support the program having entered into as many loans as were claimed during this period of time given the amount of loans outstanding as of 1995. It appears that a significant amount of bond funds have not been used to make Cal-Vet Farm and Home loans.

When I have completed the investigation and analysis, I will more fully report upon discrepancies which appear to exist in the Cal-Vet Farm and Home Loan Program.

Very truly yours,

  
John D. Maxey  
JDM:lgj

**Testimony offered by George MacClanahan at the confirmation hearing of Tomas Alvarado before the Senate Rules Committee chaired by Senator Burton, on May 8, 2000.**

My name is George MacClanahan. I am privileged to be a resident of the California Veterans' Home at Yountville. I am beginning my fifth year there and the last year and one-half of that stay has only been possible because of a life saving operation that was performed on me at the medical research facility at the University of California at San Diego. The procedure that was employed was considered to be somewhat experimental and was not available at other medical facilities in the area. I have been told by qualified medical authority that the saving of my life comes close to being a medical wonder of sorts.

That operation was facilitated by and performed under the auspices and through the intervention of the medical staff at the Veterans' Home. I literally owe my life to the Home and to the professional staff that is employed there, who diagnosed my ailment and had the knowledge of the proper methods and the facilities available for surgical intervention, together with their will to 'make it happen.' Without them I would have died. Because of them I can look forward to an unknown number of additional years of productive life, which I intend to use working for the betterment of conditions affecting the lives of veterans. It is my determination to pass on to the members of this fragile and rapidly disappearing brother- and sisterhood, the hope and inspiration that others have bestowed upon me. Nothing short of that intention could prompt me to come here and deliver the statement I am about to make.

Veterans of all kinds and distinctions go to the Veterans' Home to spend the last years of their lives. They go mostly because of ill health, but sometimes they go because they are lonesome, or afraid, or impoverished, or apprehensive, or troubled, or uncertain, or because they feel misplaced in time in the outside world and the values of that world are no longer their values. In many cases they go because they want to be near those with whom they share a kinship; that is to say, other veterans. Except in rare instances, the Home is not a rehabilitation facility intended to retrofit members for return to life outside the Home. It is instead a last refuge for them, a



haven, and for when there is need for such services, it has a hospital with a remarkably capable, understanding, and caring staff, and finally, it has a Veterans' Cemetery where their comrades wait. But until their time for that transition comes, these men and women need recognition for the contributions they have made to society and to their country. They need the respect that is their due for the path they chose at a time when America's future was on the line; and beyond that, simply for the accumulated wisdom of their years. They certainly do not need to be made to feel like the village idiot or a social pariah.

At a time when Mr. Alvarado had first come on board as Deputy Secretary under James Ramos, John Schmucker and I met with him on the subject of the Post Fund. When Governor Davis appointed Mr. Ramos as Secretary of the Department of Veterans Affairs, I asked for a meeting with Ramos regarding the future of the Post Fund. I was then Chairman of the Post Fund Budget Committee for the Allied Council. Mr. Ramos agreed to a meeting in Sacramento and asked me to bring John Schmucker along. Mr. Schmucker was at that time the Chairman of the Allied Council.

When we arrived for the meeting Mr. Ramos was otherwise occupied and asked Mr. Schmucker and me to meet with Mr. Alvarado. After the conversation had touched on some other things I brought up the matter of the Post Fund. The instant Mr. Alvarado understood that I was going to express an opinion and perhaps offer some advice about the Fund he interrupted me in mid sentence, saying "You don't even know what the *hell* you're talking about." He didn't bother waiting to hear what I had to say. His manner was insulting and his comment was clearly designed to bully me into silence about a subject of which he knew nothing at all and was not prepared to discuss. He simply took the standard company line. Any other action, such as listening while a Home Member expressed his or her views, would have been beneath his dignity and totally out of character.

I have no doubt that Mr. Alvarado had been briefed on my role as an activist in the effort to save what little remained of the Post Fund resulting from the predations of the Administration

in Sacramento that began during the economic recession of the early nineties and continued until the Legislature rescued the Fund last year. This angry, parental type of posturing has been a common defense that has been universally used whenever there is the least hint of dissension or activism on the part of Home Members, for as long as I have lived in the Home.

During my residency at the Home I have worked continuously at the Member Employment Office, except for about seven months when I was recovering from my operation. Member Employment, although not originally intended to be the exclusive function of the Post Fund, had gradually become totally dependent on the Fund, due to the Fund's convenience as a source of non-appropriated capital, which the administration could spend without legislative oversight. The Post Fund, recently renamed the Morale, Welfare and Recreation Fund, is best described as a public endowment to the Home's membership from the citizens of California. As part of my job I contributed to the periodic entries into the records of the Fund and in the furtherance of that activity, I made a comprehensive analysis of the trends of Fund balances and expenditures. At the time the Davis Administration was ushered in, I probably knew as much about the Fund, at least the Member Employment aspects of it, as any person in the Department's finance section, whether in Sacramento or in Yountville. For one thing, I knew the Fund was heading for insolvency within the next three years and so warned the Administration. (Actually, it happened in one.) I also knew that its precipitous depletion was directly attributable to the illegal and irresponsible diversions made by Department officials to defray certain operating costs of the Home.

When Mr. Alvarado made his disparaging comment, by its tone and manner suggesting that I was nothing more than a meddlesome ignoramus, all the hope that had come with Governor Davis' electoral victory and Mr. Ramos' appointment escaped like hot air from a punctured balloon. It is a very humiliating experience to have one's concerns dismissed so scathingly, especially in front of one's friends, as though they were nothing more than frivolous claptrap. It was also extremely rude on the part of Mr Alvarado to do so and it speaks volumes about his



complete lack of leadership skills. Fortunately, Mr. Ramos came in at that precise instant and invited Mr. Schmucker and me into his office and the meeting with Mr. Alvarado ended.

It is no great secret that for the last four years, of which I have a personal knowledge, and for at least another five preceding that, this agency that is entrusted with the care of California's aging war veterans has been staffed in its upper echelons by officials who have themselves displayed, and permitted in their underlings, an attitude of contempt toward the veterans in their care. That attitude is so prevalent, in fact, that people, both in and out of the Home, have begun to accept it as the norm. On January 30 I wrote a letter of reprimand to the Deputy Administrator of the Home for the derogatory manner in which he addressed Home members during a meeting I chaired. That man is an appointee of Mr. Alvarado. In April I was advised by at least seven other sources including two State employees that the man continued to verbalize disrespect directed at the Home membership. I wrote another letter to him, sending copies of that letter and the first letter to a number of people including Mr. Alvarado. Soon after, the Deputy Administrator made a precipitous departure from the Home and I was advised by an official of the department that while he would continue his employment with the Department, he would no longer be involved with Home responsibilities. Last Tuesday I found out that this man, who holds such low opinions of Home Members, was working in the Sacramento office, preparing the Home's budget for fiscal 00/01. That is disgusting. It is not unusual for Home Members to be lied to by officials of the Department. It happens regularly, with impunity. The real crime here is that an individual, who holds such alien views towards veterans, was given carte blanche authority to prepare the Home's budget. This is the same individual who prepared last year's budget and the home is now \$3.9 million in the red as a result. Rather he should have been discharged. The individual who protects and defends him dishonors the Governor and he dishonors the Home Members and he dishonors his fellow employees.

Such a state of affairs is unconscionable, and the very idea of these kinds of conditions should be abhorrent to even the most callous and disinvolved person. No other single issue outstrips, in order of magnitude, the hurtful act of crushing the human spirit. When the spirit that

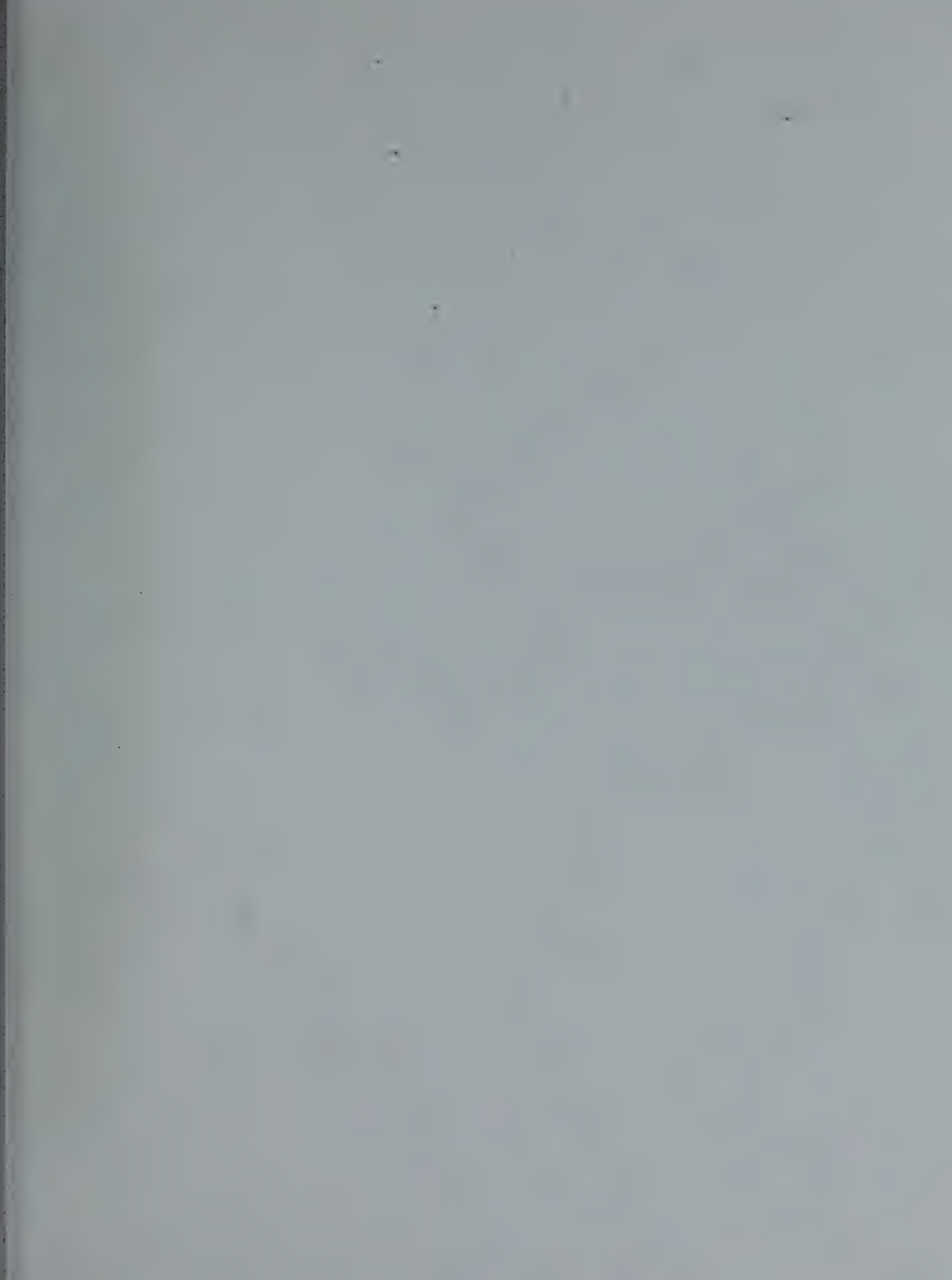
is crushed resides within an elderly person, man or woman, especially one who has spent a lifetime trying to do what is morally right, it is a devastating and dehumanizing experience.

Mr. Chairman, you are in receipt of a letter signed by the Chairman of the Allied Council endorsing Mr. Alvarado for the position of Secretary of Veterans Affairs. The assertions in that letter are fashioned of whole cloth, without a shred of truth. Not a hint of a canvass was ever made to determine what the one thousand, one hundred and twenty-five Home members actually do think on the subject of Tomas Alvarado as Secretary of the Department, if, in fact, they have a preference at all and would dare to voice it. As to the preference of the Home's nine hundred employees, to say that they endorse Mr. Alvarado is the rankest joke conceivable. I have asked everyone in sight and I find very few votes, member *or* employee, for Mr. Alvarado. I don't know why the Chairman of the Allied Council misstated the facts in such a potentially damaging way. Perhaps he thought it was the politic thing to do.

The leadership of the three million veterans that reside in California should rest with a man or woman who holds the veterans' interests, rather than their own, close to their heart. Mr. Alvarado misses the mark widely in that regard. The responsibility for the protection and well-being of veterans should lie with one who is, in fact, a veterans' *advocate*, not just one who claims that distinction, but one who believes in advocacy to the extent he will not tolerate from any source the self-serving desire to humiliate the meek or the less fortunate, which, as we have seen, is the ultimate expression of Mr. Alvarado's style.

Mr. Alvarado carries far too much baggage, some of it of the sleaziest kind, damning if true, and unfortunate even in its best light, to be a unifying and effective voice in the advancement of veterans' interests. Finally, he has neither the temperament, the education, nor the experience to do an adequate job of directing the personnel of the Department of Veterans Affairs in the demanding task of rebuilding the Department from the ground up, which must by definition be the *backbone and the heart* of any effort to make the Department worthy of the three million veterans it represents, and who Governor Davis has indicated it is his intended purpose to honor.

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